RAZA'S

KIFL AL-FAQIH AL-FAHIM FI AHKAM AL-QIRTAS AL-DARAHIM (1324)

ON ISLAMIC LAW ABOUT PAPER MONEY

THE SEAL OF DISCERNING JURIST

Translated, introduced and annotated by

OBAID-UR-REHMAN

Securities and Exchange Commission of Pakistan

بشکریہ جناب خلیل احمد رانا صاحب

پیشکش: محمد احمد ترازی

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To, Sheikh Akhtar Raza,
the sufi jurist

Contents

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Acknowledgements

All praise is for Allah. Without His mercy it was not possible to bring out the work. I pray Him for peace upon the beloved Prophet Muhammad, his family and the companions. I owe this effort to Allah and His beloved Prophet.

Work on this book started in later part of 2007 when I read with the view to assess its significance for Islamic Law and Economics. *Kifl al-Faqih* is included in ninth volume of at Raza's *Al-Ataya al-Nabwiya fi al-Fatawa al-Ridwiya* in books of sales. The edition of *Al-Ataya al-Nabwiya* published by Raza Foundation Lahore with references and translation in Urdu includes *Kifl al-Faqih* in volume 17. I have included the Foreword to *Kifl al Faqih* by Hamid Raza that was not included in Raza Foundation's edition of *Al-Ataya al-Nabwiya*. The Urdu translation of the *Kifl al-Faqih* by Maulana Hamid Raza, the elder son of Raza, titled *Note se Muta'liq Sub Masa'il (1329)* (All Issues related to Currency Note) originally published in 1329 AD from Bareilly helped immensely in comprehending real meaning of the text. The translation is based on original Arabic text and Hamid Raza's translation published under the title *Bila-Sud Bankari ka Shara'i Tariqa-i Kar* (The Method of Interest free Banking according to Sharia) by Nuri Kutubkhana Lahore's edition published in 2000, which itself is a reprint of the original edition published from Bareilly in 1329 AH Through these multiple editions from different publishers, I have tried to reach to the correct version of the original text.

Many people helped me in bringing this work to the readers. The book could not have come out in this form if encouraging words of Maulana Akhtar Raza Azhari, the great grandson of Ahmad Raza, had not pushed me to work beyond the initial draft. A number of scholars supported me while I was translating the text. Among them are Maulana Yunus Shakir, Abul Qasim, Farhan Ahmad and Muhammad Yunus. Some of them helped me in meeting Maulana Akhtar Raza while he was on visit to Pakistan. I cannot forget the help of Kashif, Rizwan and Ali, my friends, and Mubeen, Faraz and Rahat, my colleagues at the Securities and

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My family members took troubles of performing most of my duties to free me for this task. I cannot describe their silent support over years in words. May Allah reward everyone who helped in any manner to bring this book to the readers. Mistakes, if any, are my own.

Note on Transliteration and Translation

Transliteration of Arabic, Persian and Urdu words follows the *ALA-LC Romanization Tables: Transliteration Schemes for Non-Roman Scripts* with some modifications and the exception of rule 11(b1) related to (يّ or ىّ) representing the combination of long vowel plus consonant where it is written as *iyah* but here it is written as *iya* (e.g. *Hindiya*). Transliterated words have been italicized only on the first occurrences. In the interests of readability, only two transliteration symbols are used in this book: the opening inverted comma ' signifies the slightly strangulated vowel *ain* and its closing counterpart ' indicates the glottal stop *hamza*. They are included only when they fall in the middle of a word. The words hadith, imam, jihad, kafir, masjid, mufti, mujtahid, Quran, salat, Sharia, Sunna, sura, umma, zakat are treated as common English words. Therefore, these are not italicized.

It should be noted that Muslims conventionally and Raza extensively include the words 'May Almighty Allah bless him and grant him peace' (*sall Allahu ta'ala alayhi wa sallam*) when referring to the beloved Prophet, or the variants that are often attached to the names of lesser prophets, archangels and Allah. Punctuating the text completely in that way would have been more likely to alienate Western readers than to inspire them, therefore, this book uses the phrase at first instance of the names only. With later instances, the related phrase has been added where seemed appropriate in the interests of readability.

Unless otherwise indicated, translation of all other passages, including Quranic verses and hadiths, is my own. There are no chapters or sections in the Arabic text and the Urdu translation. Chapter divisions and chapter headings as they appear are my own. As a rule, all footnotes are by Raza whereas I have added annotations and references in the form of endnotes. Where necessary, I have added explanations in square brackets.

Throughout the text, Raza has used abbreviated names of sources. A list of the abbreviations with complete names is as follows:

Ashbah *Al-Ashbah wa al-Naza'ir ala Madhab Abi Hanifa al-Na'uman*

Bahr	*Bahr al-Ra'iq sharh Kanz al-Daqa'iq*
Bazzaziya	*Al-Jama al-Wajiz* of al-Kurduri (*al-Fatawa al-Bazzaziya*)
Bukhari	*Al-Jami al-Sahih al-Bukhari*
Dur	*Al-Dur al-Mukhtar fi sharh Tanwir al-Absar*
Fath	*Fath al-Qadir lil Ajiz al-Faqir ala al-Hidaya*
Ghuniya	*Ghuniya Dhawi al-Ahkam*
Hidaya	*Al-Hidaya sharh Bidayat al-Mubtadi*
Hindiya	*Fatawa-i Alamgiriya* (*Fatawa-i Hindiya*)
Inaya	*Sharh Al-Inaya ala al-Hidaya*
Jami	*Jami al-Saghir fi al-Fiqh*
Kanz	*Kanz al-Daqa'iq fi al-Furu*
Khaniya	*Fatawa-i Qadikhan* (*Fatawa-i Khaniya*)
Mabsut	*Kitab al-Mabsut* (by al-Sarakhsi)
Muslim	*Al-Jami al-Sahih al-Muslim*
Nahr	*Nahr al-Fa'iq*
Shami	*Hashiya Rad al-Muhtar ala al-Durr al-Mukhtar*
Shurunbulaliya	*Ghuniya Dhawi al-Ahkam*
Tahtawi ala Dur	*Hashiya Tahawi ala al-Dur al-Mukhtar*
Tanwir	*Al-Dur al-Mukhtar fi sharh Tanwir al-Absar*
Tatarkhaniya	*Al-Fatawa al-Tatarkhaniya*
Zahiriya	*Fatawa-i Zahiriya*
Zakhira	*Zakhirat al-Fatawa*

Translator's Introduction

Economic activities are a vital part of human life. While certain activities do not involve exchange of assets, the larger part of economic life has the concept of transaction at the core. However, counter values in a transaction rarely have same values; therefore, barter can allow very limited economic activity in terms of transactions that are carried out at fair value. This gives rise to the need of a medium of exchange that can be used as standard for value measurement. This need is served by money.

Money not only serves the purpose of medium of exchange, it also meets the need of storage of value. Most of us, therefore, keep our savings in the form of money. The development of money earlier took the form of a number of commodities, especially fungibles, serving as moneys. However, with the expansion of trade beyond local community, only assets with widespread acceptance as currency could survive as money. These were primarily metallic moneys because of intrinsic values of the metals. At least for two millenniums, moneys have primarily comprised of metals. The basic reason was that metallic moneys could be converted into metals if they loss status as currency or were not accepted especially in the foreign countries. Based on the relative value, metallic moneys were one of the three types: gold, silver and copper or some other less-valuable metal. This was also necessary to create a hierarchy or denominations of currencies.

In the medieval world, coins were used as money and fewer transactions were carried under barter system. Advent of Islam brought a new series of changes to the economic life resulting from Sharia which lays down injunctions about economic activities including sale, usury, partnership etc. While commerce expanded, the nature of transactions became increasingly complex. However, medieval Muslims were able to produce spectacular commercial accomplishments because they were uncommonly adroit at adapting and synthesizing the tenets of their creed with the dictates of economic reality.[1] This was well supported by Muslim

jurists through their abilities to interpret Sharia to address the new situations.

Books of Islamic law (*fiqh*) generally have a separate Book or Chapter on *sarf* (money exchange) that deals with rulings related to exchange of money with money. However, it is to be remembered that sarf relates to original moneys only, that is, gold and silver. Muslim jurists have divided various types of moneys into original, gold and silver, and *istilahi* (things that are used as money because of a practice) like copper coins. This distinction is important because jurists do not apply all the injunctions about original moneys to istilahi moneys as this book would show.

The second half the nineteenth century saw the paper money becoming popular globally although the usage of gold and silver coins as currencies continued till the first half of twentieth century. As the paper money became currency in countries with significant Muslim populations, the debate about the legal position of paper money in Sharia became widespread. Confusion surrounding the legal position of paper money was primarily based on the insignificant intrinsic value of the paper.

Muftis were approached to issue rulings about paper money in Islam. Different fatwas on the matter as well as the silence of some muftis contributed to the confusion. A number of books were written by ulema to address the issue. Likewise, many opinions were expressed in the form of individual fatwas. The views expressed can be divided into three categories. One view stated that paper money is a certificate of money deposited with the government treasury. This view was expressed by Rashid Ahmad Gangohi of Deoband. A second view stated that paper money is the same as the number of dirhams or dinars printed as face value on it. Abd al-Hay Lucknawi issued a ruling expressing this opinion. A third view stated that paper money is an asset itself and istilahi money. This view was expressed by ulema of Rampur including Irshad Husayn Rampuri, some ulema of Madras, and Ahmad Raza Khan Barelwi.

According to this last group of ulema, paper money was an asset and had gained acceptance as istilahi money by virtue of practice among users. Raza's decisive contribution later came out in the form of *Kifl al-Faqih al-Fahim fi Ahkam-i Qirtas al-Darahim (1324)*, literally meaning "Guarantee of a Discerning Jurist on Injunctions about Paper Money".

Ahmad Raza was born and lived in Bareilly, a city in India. He was educated primarily by his father, Naqi Ali Barelwi. After completing his education and the training as mufti at the age of 13 years, he spent the remaining life issuing fatwas. He was a prolific author. As many as 1000 books and glosses are said to have been written by him. Zafar al-Din, his student and biographer, has counted his treatises in as many as 50 different branches of knowledge.[2] Raza was also a popular Sufi. He left for the eternal world in 1340/1921 but his hundreds of published books, dozens of students and over a hundred sufi deputies (*kulafa*) in the Qadiri-

Razwi order spread his message among tens of millions of the Muslims of subcontinent since his life time. He is remembered with titles like A'lahazrat (his highness) and Imam-i Ahl-i Sunnat (Imam of Ahl-i Sunnat al-Jamat).

Raza was an upholder of traditional hanafi views on all legal matters and, yet, he was successful in addressing issues and presenting solutions to problems at hand with his extraordinary juristic ability. His approach in addressing the issue of paper money was no exception to this practice. He was able to find narration for forming basis of his ruling in earlier hanafi jurist Ibn Humam.

As pointed, confusion did exist among ulema about the exact position of paper money in Sharia. Some ulema had preferred not to answer the questions about paper money while the opinions of other ulema could not win consensus. Meanwhile, Raza went to Makkah for performing his second haj. Upon his arrival, a sequence of event made him popular among ulema of Makkah. While Raza was in Makkah, Khalil Ahmad Ambethwi also reached Makkah and considered the presence of Raza in Makkah an opportunity to respond to Raza's fatwa against Ambethwi (and other Wahhabis) issued India. Ambethwi raised the issue of knowledge of the Prophet about the Hidden (*Ghayb*) in the court of the governor of Makkah. Raza was asked to reply to his questions. The reply came out in the form of *Al-Dawlat al-Makkiya bi al-Madat al-Ghaybiya (1323)*, which instantly became popular among the ulema of Makkah and was also read out in the court of the governor. The book drew many endorsements and drew the attention of ulema towards his ability to address complex issues. The issue of paper money was among the issues at that time. Questions about it were presented to Raza.

Imam of Hanafis' musalla in the grand masjid of Makkah, Sheikh Abd Allah Mirdad and his teacher Sheikh Hamid Ahmad came up with 12 questions about paper money. The questions from ulema of such status were evidence of the fact that ulema were confused about the legal position of paper money at that time. The wonderful constvuction of questions also points out to the expertise of the two ulema in law. The reply came out in the form of *Kifl al-Faqih al-Fahim fi Ahkam-i Qirtas al-Dirahim (1324)*. The book was welcomed by ulema and Raza himself has reported the acceptance and praise of the book by the ulema of Makkah. They made copies of the book, some of which are still preserved in libraries. Raza told the events of his journey to Makkah in *Al-Malfuz (1338)*. The paragraphs related to *Kifl al-Faqih* are quoted here.

> There was not any learned person in Makkah who had not visited me during the pilgrim except Sheikh Abd Allah Ibn Siddiq Ibn Abbas who was the mufti of Hanafis (*mufti i hanfiya*), an office second only to that of the Sharif. His high designation prevented him from visiting me. He sent a close disciple with the message who said, "The mufti of Hanafis has sent

greetings to you and is eager to see you." I intended to promise that I would visit him but Maulana Syed Isma'il, who was present, stopped me and said, "Swear *(qasm)* to Allah, I would not happen; all ulema came to meet you so why he does not come too." His swear left no option for me. But the meeting with Sheikh Abd Allah Ibn Siddiq was destined to happen and in an amazing manner.

During those days, Maulana Abd Allah Mirdad and Maulana Hamid Ahmad Muhammad asked me 12 questions about paper money. In reply, I wrote the book *Kifl al-Faqih al-Fahim fi Ahkam-i Qirtas al-Darahim (1324)*, which was kept wanting fair handwriting in Library of the holy sanctuary with Syed Mustafa Khalil, brother of Syed Isma'il, who had excellent handwriting skills. In past, my teacher's teacher Maulana Jamal Ibn Abd Allah Umar, who was mufti of Hanafis in his times, was asked a question about legal position of paper money. He replied, "Ulema are the custodian of knowledge as trustees, and I do not find any basis for paper money in earlier book so that I could reply to the question."

One day, I reached the library and noted that an elegant man was reading *Kifl al-Faqih*. When he reached to the point where I had quoted the narration from *Fath al-Qadir* that sale of a paper for thousand [dirhams] was permissible and not improper, he exclaimed, "Why Maulana Jamal Ibn Abd Allah did not found this narration." After this, he asked for certain books to copy some citations. I was marking corrections on *Kifl al-Faqih*. Till that time, we had no introduction. He placed the inkpot on a book that he was not reading or using for copying citations. I did not object but simply removed the inkpot from over the book. He again placed the inkpot over the book saying, "Permissibility of it [placing inkpot over a book] is stated in the chapter of improper in *Bahr al-Ra'iq*." I did not reply that there was no chapter of improper in *Bahr al-Ra'iq* because the book ended before that chapter at the end of the chapter on justice rather I said, "It is not like this rather prohibition has been stated in *Bahr al-Ra'iq* except where there is a need, for example where someone wants to copy citation and the pages are turning due to airflow." He said, "I am going to copy citations." I replied, "But you still are not writing." He went silent and inquired about me from Syed Isma'il who told him that I was the author of *Kifl al-Faqih*. He turned to me with embarrassment and left in a while. Syed Isma'il exclaimed, "Allah is pure! This is an amazing event."[3]

First chapter defines the nature of paper money. The author presents evidence that it is a valuable asset. Difference in the face values of currency notes is discussed. The chapter puts the paper money into broader context of the four kinds of assets recognized by Muslim jurists. After identifying the nature of paper money, the chapter concludes with rulings of Sharia about zakat on paper money, permissibility of paper money in paying dower, and that compensation for destruction of note may be paid in dirhams.

Second chapter details the permissibility of exchanging currency note with silver dirham or gold dinar. A popular juristic opinion about the

minimum price for a valid sale has been analyzed in the context of insignificant intrinsic value of paper money. In classifying the sale of note into the type of sale transaction, the author presents the view that sale of note is not exchange of goods for goods rather it is exchange of money for goods.

Third chapter details the permissibility of dealing with paper money in credit transactions. Lending of paper money is discussed at length. The most important part of the chapter is where the author presents evidence to prove permissibility of credit sale of currency notes for dirhams, and also shows evidence of permissibility of advance-payment sale from the books of Imam Muhammad al-Shaybani.

Fourth chapter establishes that paper money can be sold for more than the printed face values. The author analyzes the ruling of a contemporary Abd al-Hay Lucknawi on the subject iscue. The later part of the chapter is devoted to the usage and permissibility of legal devices to avoid riba.

Fifth chapter moves on to describe a transaction where the idea gets further complicated and sale and credit of paper is money is combined into a single transaction to make a financing product. After stating the permissibility of the questioned financial product, the author moves on to describe various other product development possibilities and presents proofs of permissibility of devices from the Quran and Hadith.

Hamid Raza Khan wrote the Foreword to the book when it was published a year later from Bareilly. The second edition came out four years later with a parallel Urdu translation by Hamid Raza. The original book or the translation is not divided into chapters. For the purpose of this English translation, I have grouped the replies to the questions in the form of chapters and assigned them headings.

With the publication of the second edition of *Kifl al-Faqih* with parallel Urdu translation, Raza wrote a supplementary book *Kasir al-Safih al-Wahim fi Abdal i Qirtas al-Darahim (1329).* This time he addressed the two other fatwas about legal position of paper money that were issued by Rashid Ahmad Gangohi and Abd al-Hay Lucknawi. The Urdu translation of this book by Raza himself was published as *Al-Zayl al-Manut li Risalat al-Note (1329)* from Bareilly with the second edition of *Kifl al-Faqih*. In that book, Raza went to details to show that both the fatwas were incorrect. He raised 18 objections to the fatwa of Gangohi and 120 objections to the fatwa of Lucknawi.

A renewed interest in Sharia-compliant or Islamic Finance has developed in the second half of the twentieth century. In the period between *Kifl al-Faqih* and the start of renewed interest, dirhams and dinars have been completely replaced by paper money. Because of its central role, paper money has been subject of various Sharia boards and judicial forums over past decade. For example, Fiqh Academy Jeddah issued its decision on paper money. Likewise, individual ulema and scholars have

also published their opinions about paper money. It is notable that most of the fatwas and decisions differ with the fatwa of Raza.

Foreword

Allah's name I begin with, the most Merciful and the most Compassionate

I praise, Almighty Allah, the most commended as praised by the best of His creatures. May Allah's peace and blessings upon the one who has been appreciated more than others and whose name is Ahmad, peace and blessings upon him.

After praise of Allah and His Prophet, I state that I witnessed the respect Allah has given to the one who is imam of Ahl-i Sunnat wa Jama'at, the reviver of Islam in the present era, a sign among the signs of Allah, my teacher and father, Sheikh Ahmad Raza Khan. I witnessed it when he went to the two holy sanctuaries in the year preceding the last year. I accompanied him as a family member and saw the extraordinary respect and blessings Allah had kept for him in the two sanctuaries.

People of both the holy cities praised and honored him, and helped him against his opponents who were severely defeated and suffered great losses. Ulema (*ulama*) of high reputation and credentials applauded and appreciated him and confirmed his status as the imam and the head of ulema. In fact, they kissed his hands and feet, listened continuously-transmitted hadiths and obtained his permissions for transmitting hadiths from books of hadiths and the four books (*masafahat*). They even joined his Qadri-Razvi chain of Sufism. This all occurred at the wishes and insistence of those ulema and showed the greatness Allah had decided for him. And no doubt 'this is Allah's munificence, He may bestow it to whomever He wills; and Allah is extremely Munificent.'[1] It was a pleasure to hear his praise. All sessions and venues were fragrant with his superiority. Hearts attracted towards him as his fame reached the surroundings.

The popularity of his knowledge and wisdom spread immensely due to his brilliant book *Al-Dawlat al-Makkiya bi al-Maddat al-Ghaybiya (1323)* that he had written in reply to the questions raised by Wahhabis. The book left

no room for them except to run away. He wrote that book in Makkah in just three short sessions aggregating less than 10 hours. Again, it was nothing but a miraculous act (*karamat*) from Allah, which has become a normal feature for him in such situations. May Allah bless him, he wrote that book in a quick and mature style, abundant with references and adorned with intellectual points, which ulema found wonderfully helpful.

These events established a firm opinion among the ulema that he was an authority on rational (*maqulat*) and transmitted sciences (*manqulat*). Knowing this, they approached him with many issues, raised demands for solutions and brought a lot of queries to him for decisions according to Sharia. He responded to them with pleasure. Among the questions brought to him were the 12 questions [about paper money] that assessed the depth of knowledge, the height of abilities, the width of experience and the level of expertise. The questions had been presented to and discussed with other ulema, including those holding high credentials, but remained unanswered. He started writing the answers to the questions on Saturday but fall sick on Sunday so he completed the answers on Monday, 23 Muharram 1324 AH in Makkah.

Two well-known ulema of Makkah had posted those questions. First of them was imam of Hanafi prayer place (*musalla*) Sheikh Abd Allah Mirdad Makki Qadri Razvi, son of Sheikh Abi al-Khair Mirdad, and the second was his teacher Sheikh Hamid Ahmad Muhammad, may Allah keep them and us safe from infidels and their effects, and give His protection, shower his blessings, forgive our sins and let us visit shrine of His beloved again and again. May Allah bestow peace and blessings upon the Prophet, his companions and pure family, Allah be pleased with them.

The author named this book as *Kifl al-Faqih al-Fahim fi Ahkam al-Qirtas al-Darahim (1324)* (The Seal of Discerning Jurist on the Injunctions about Paper Money). I have read it and endorse its contents. And all praise is for Allah and His peace and blessings upon the greatest of the Prophets, his family, companions, relations and the umma (*ummah*).

Muhammad Hamid Raza
1325 AH
(seal)

Questions

What do you say, may you remain an authority, about the paper used as currency called *note* (currency note)? We have many questions about it:

1. Is note an asset (*mal*) itself or only a certificate like bond (*suk*)?
2. When note has value equal to or more than the prescribed limit (*nisab*) and a year passes, would zakat (annual mandatory alms) be payable on it or not?
3. Is it permissible (*jayz*) to stipulate note as dower (*mahr*)?
4. Where a person steals note from a safe place, would it be imperative (*wajib*) to punish him by hand amputation or not?
5. Where a person destroys note of another person, would he be required to give note as compensation or equivalent *dirhams* (silver coins) may also be given?
6. Is sale of note for dirham, *dinar* (gold coin), or *fulus* (copper coins sing. *fals*) permissible?
7. Where note is exchanged with clothes, for example, would the sale be simple sale (*bay mutlaq*, sale of goods for money) or barter sale (*bay muqayda*, sale of goods for goods)?
8. Is it permissible to give note as loan (*qard*)? If yes, would the repayment be mandated in the form of note or dirhams?
9. Is it permissible to sell note on fixed-term credit for dirhams?
10. Is advance-payment sale (*salam*) of note permissible whereby dirhams are paid in advance, for example, on the term that note(s) of a particular description would be received after a month?
11. Is it permissible to sell a note for more than its face value, for example sale of 10-dirham note for 12 or 20 dirhams or similarly for less than its face value?
12. If the sale stated in the last question is permissible, would it also be permissible where Zayd wants to borrow 10 dirhams from Amar, and Amar says, "I do not have dirhams but I may sell you 10-dirham note for 12 dirhams on one-year installment-basis credit with the

agreement that you would repay one dirham every month?" Or thi transaction would be impermissible because it is a device (*hila*) t receive *riba* (interest)? If the said transaction is permissible, how is i different from riba, and why is it held lawful (*halal*) and riba i forbidden (*haram*) although both result in excess?

Benefit us with your reply. May you get reward on the Day of Judgment?

Sheikh Abd Allah Mirdad Makki
Sheikh Hamid Ahmad Muhammad
Muharram 1324 AH, Makkah

1

Legal Position of Note

All praise is for Allah, the provider of unlimited blessings. Peace and blessings upon our master (Prophet Muhammad), his pure family and the companions, Allah bless them. I pray Allah to guide me towards the correct, and help and support us.

Note is a very recent and new invention. You would not find even its name in the books of previous ulema, not even Ibn Abidin al Shami (d. 1253 AH) and alike whose era has just passed. However, our imams, may Allah capitalize their sincere efforts and bless us with them, have given enough explanation of religion and nothing about it remains hidden. Sharia is as clear and bright as a day. They developed principles (*usul*) and presented everything separately. They set general rules (*kulyat*) that cover innumerable cases (*juzyat*). As a result, knowledge inherited from them appears to encompass every new invention. Hopefully, Allah will not depose this world of ulema who have the ability to extract hidden injunctions and benefits from those treasures. But it is true that some people have more intellect and greater foresight, and human beings do commit mistakes and also make correct decisions. In fact, knowledge is the divine light (*nur*) that Allah casts in the hearts of His chosen ones. So we have no option but to pray Allah for guidance towards the correct. Allah is sufficient for us and He is the greatest source of help. We trust Him and then His Prophet, Allah's peace and blessings upon him.

I now reply with His help and guidance. I say (*aqol*) that your first question is the base of all other questions. When the nature of the questioned paper (currency note) is decided, all related rulings of Sharia would become clear without any confusion.

Note is a Valuable Asset

[Question 1: Is note an asset (*mal*) itself or only a certificate like bond (*suk*)?]

The substance of note is known. It is a piece of paper, and paper is a valuable asset. In the form of currency, this paper has an increased attraction for people and has become more worthy to be accumulated for a needy time. These characteristics also constitute the definition of asset. As stated in *Shami*, *Bahr* etc, "An asset is a thing that has attraction for people and is capable of being kept for the time of need."[1]

We know that Sharia has not prevented us to benefit from our piece of paper unlike wine and pork. This forms the base for value of an asset, as stated in Ibn Abidin's *Shami* and cited in it from *Talwih*, "An asset is a thing that has the quality of storage for usage in need."[2] Moreover, value is an essential characteristic of an asset.[3] Again, it is stated in *Shami*, with reference to *Bahr* and *Hawi Qudsi*, "Asset is anything, other than human being, that has been created for the benefit of human beings, and is capable of being saved and usage at discretion."[4]

Reference for note from earlier books

Ibn Humam (d. 861 AH) states in *Fath*, "If someone sells a piece of paper for 1000 (dirhams), the sale would be permissible and not improper (*makruh*)."[5] This statement provides the basis from Sharia for note that Ibn Humam wrote about 500 years before the circulation of note as currency. Note is the piece of paper that is sold for 1000 dirhams. His statement is not astonishing since such miraculous acts have occured from our ulema abundantly, may Allah bless us with their efforts in this world and the Hereafter (*Akhira*). So there is no confusion in that note is a valuable asset (*mal al-matqum*) itself, which is bought, sold, gifted and inherited, and all transactions of an asset apply to it.

Refutation of the doubt that note is certificate and not asset

I say that it is incorrect and wrong to perceive note as a certificate like bond. This wrong perception would imply a situation that can be described as follows. The state issuing note takes loan in the form of dirham from the receivers of note, and in the form of note, the state gives a proof of loan and its value. As a result, the state repays the loan when bearer returns the note. When people transfer notes to others, they actually take loan from the new receivers. In this way, they assign their debt receivable from the state to the new receivers, and give the notes as proof of this hawala (assignment of debt) so that the new receiver may claim repayment from the state. Likewise, the loan and assignment of debt repeat on every transfer of note. This would be the meaning of note if it were a certificate.

Even an intelligent child knows that the said perception is wrong, and people who use notes do not mean it. They never intend any loan or hawala, and even do not think about them. A person getting note for dirham neither enters name of the other party in his debtors' book [Accounting records] nor does ever ask him to repay dirham and take the paper [note] back. Similarly, payer of a note neither enters the name of the other party in his creditors' book nor does he give direction in his life, or before death, to his heirs to repay the loan and have the note returned. Most of the moneylenders never give loan without fixing a periodic riba until full loan is repaid. But as you know, they receive note for dirhams without asking for monthly or annual riba. If they believe the exchange as lending, they would not leave without receiving riba.

In reality, everyone intends to exchange and sell notes while dealing with them. Receiver of notes knows that he has acquired notes for dirhams, and the person giving the notes knows that he has released notes from his ownership for dirhams. The receiver considers the notes as his assets and property like dirhams, dinars and *fulus* (copper coins). He saves, gifts, bequeaths and donates notes. People always think the transfer as sale, and their objective is also to sale. Transactions rely on underlying objective. We know that 'acts depend upon intentions, and one gets reward according to his intention.'[6]

In sum, note is a valuable asset for people. They save and accumulate note, and it has attraction for them. They sell and buy it and treat it like other assets.

Face Values of Notes

Notes have high prices as face values, for example 10, 100 and 1000 dirhams. I say that I have already quoted from *Fath* that a piece of paper may be sold for 1000 [dirhams].[7] The only requirement is the consent of the seller and the buyer. So there cannot be any question about the pieces of paper [notes] that have consent of groups of people who have agreed various prices of each of those papers in their practice (*istilah*).

Apart from this, Sharia also values state-issued currency. Where a person steals state-issued 10 dirhams, he will be punished by hand amputation. But a person who steals silver weighing equal to 10 dirhams will not be punished in that manner if the price of silver is not 10 dirhams or more, as stated in *Hidaya* etc.[8] Similarly, copper weighing equal to state-issued fulus of a dirham does not have value equal to a dirham or, sometimes, even half-dirham coin. This is also true for silver. In past, silver weighing equal to two dirhams was sold for one dirham. Many ignorant people used to buy it without knowing the riba involved in that purchase. Thus, if status as currency can increase the value to twice, it may also increase the value to even thousand or more times.

People who are aware of Sharia or at least have common sense are aware that a cheap thing may receive an attribute that increases its value beyond thousands of similar things. For example, it happened many times in history that a slave girl was bought for 200,000 dirhams while another was not bought even for 30 dirhams. This happened in spite of the fact that attributes have not distinct share in price. Even where hands and legs are not intentionally cut, it is the person that has the price, which the attributes raised because of increase in attraction for buyers.

Where a paper contains rare and novel knowledge (*ilm*), it will not be objectionable if a person who is a seeker of that piece of knowledge and aware of its value buys that paper for 10,000 dirhams. His act will be lawful. The Quran proves it and juristic consensus (*Ijma*) supports it. Allah says, "But if a transaction has your mutual consent."[9]

Writing is not an Asset

Those 10,000 will not be the price of the writing on the paper because writing is not an asset, as stated in *Hidaya* and other books in which issues have been given with arguments.[10] It is stated in *Hidaya*:

> The act of stealing Quran will not attract the punishment of hand amputation if it is gold plated. Reason is that writing is not an asset, and the Quran is secured because it carries divine words rather than for its binding, pages or golden designs. Similarly, the amputation will not be ordered where any register is stolen because the objective of keeping it is written contents, which are not assets. But an exception to this rule is numerical register because numbers therein do not have value for others, and it would be stolen only for obtaining the papers.[11]

Therefore, it is clear that a piece of paper may have price of 10,000 dirhams because of the writing it has. So it will not unreasonable if note has price of 10 or more dirhams because of specific printing and attraction for people. Sharia has not disallowed it. This issue is quite obvious, and enough supporting evidence has been presented.

Kinds of Assets

I say that assets have four kinds as stated in *Bahr* etc. The first kind comprises assets that are always money (*thaman*), that is, gold and silver. These will always be moneys whether they are used to buy anything or sold for anything, or they are exchanged with any other specie (*jins*) or their own species, or users call them as moneys in custom (*urf*) or not, for example, silver and golden pots that are not pure moneys because of workmanship and can be determinate (*mutayan*) in a contract of sale. Exchange of original moneys is called original-money exchange (*sarf*),[12] and its conditions will apply to such a transaction. Reason is that Allah has

created gold and silver to serve as moneys and 'His creations do not change.'

The second kind comprises things that are always goods, for example, clothes and quadrupeds. They are goods whether received in consideration of selling anything or exchanged for anything, and they are never payable as liability (*dayn*), which is a characteristic of money. So this objection would not arise that in barter sale (*bay muqayada*, sale of goods for goods), both counter values are money from one aspect.[13] Ibn Abidin has given this explanation to remove objections of al-Tahtawi.

A question over the point of Ibn Abidin

I say that an objection arises here that things made of silver or gold, for example pots or bracelet, do not create liability but they are determinate in a contract, as quoted from *Bahr*, and this will be contradicted if his clarification is upheld. To me, each counter value is a good in barter sale and cannot be purely money even if it is money from one aspect. Reason is that sale is not possible without money and good as against the next kind of assets which could be either pure money or pure goods.

The above two kinds of assets comprise things that are always either money or goods even though the other aspect may also be present. The example of clothes was left unconditional by the author and was upheld in commentaries and glosses on his book. His statement implies clothes that do not have same value else they will fall in third kind if they are regular as regard: (1) nature, like wool or cotton, (2) place of manufacture, like made in Syria or made in Egypt, (3) material, like copper, (4) measurement of length and breadth, or (5) weight if they are sold by weight. For this reason, advance payment sale (*salam*) is permissible in fungibles as discussed at appropriate place.

The third kind comprises assets that have some attribute, which makes them either money or goods in a given situation. I have put it differently from the definition given in *Tanwir* that states this kind of assets as moneys from one aspect and goods from the other.[14] Such a definition would have repeated the concept of barter sale, as discussed under the second kind.

Few words on the statement in Tanwir al-Absar

I say that I have added qualifying words "have some attribute" to exclude the fourth kind that too is or is not money but not for any attribute rather because of practice. Assets under the third kind are known as fungibles (*mithlis*). Fungibles may be traded with original moneys [gold or silver] or things other than original moneys. In the first situation, where traded with original moneys, a fungible will always be a good whether the fungible is described as consideration or the original money is described as such, and whether fungible is determinate or not. For example, If seller says, "I sell this gold against this number of mounds of wheat or against this wheat,"

in both cases wheat would be the good. If the wheat is determinate, the sale will be simple sale (*bay mutlaq*, that is sale of goods for money). If the wheat is indeterminate, the sale will be advance-payment sale and the related conditions will apply. In the second situation, a fungible will be traded with a thing other than gold or silver. If the fungible is consideration for the thing sold, the fungible will be money whether determinate or not. For example, If seller says, "I sell this cloth for this much wheat or these wheat." The sale will be simple sale whether wheat is determinate or not, and delivery of the wheat will be required. However, if a fungible is sold as consideration of something: the fungible will be money where determinate, for example, if seller says, "I sold these wheat against this cloth," or the fungible will be good where indeterminate, for example, if seller says, "I sold this number of mounds of wheat against this slave." In each case, the sale will be advance-payment sale and the related conditions will apply.

In short, where a fungible is traded with gold or silver, it will be the good sold. And in case of trading fungible with anything else, if the thing is sold for it, the sale will be simple sale; otherwise the fungible will be money where indeterminate, and good where determinate. I have stated the same as Ibn Abidin had written but in a more specific and organized manner.

The fourth kind comprises assets that are actually things but money in practice, for example fulus. *Istilahi* moneys (things in use as moneys because of practice) remain moneys until these circulate as currency, thereafter they revert to the origin. Where users wish to use an asset as istilahi money, they must value it in relation to original money. Reason is simple. An alternate is valued with reference to the original. For example, 64 Indian fulus or 21 halalas (Arabian fulus) are valued as equal to one dirham. Users have option to agree to any ratio of values because there is no limitation on practice. About 20 years ago, two types of fulus were used as currency in India, state-issued copper coins (called *double*) and rectangular copper pieces (called *mansuri*) each mansuri equal in weight to two double coins. Value of 64 Doubles was fixed at one dirham whereas the number of mansuri valuing one dirham was variable. Sometimes, even 80 mansuri were valued equal to one dirham. This practice continued until mansuri lost circulation as currency. Hence, this all relates to practice or terms of users, and Sharia has not specified any limit for it.

Now, you should know that note falls in the fourth kind of assets. As a piece of paper, it is actually an asset that is istilahi money because users treat it as money. Face values or denominations printed on notes are estimates of their values in relation to original money as discussed. Therefore, the amount printed on note is a practice without any restriction, and its reason and justification will not be questioned. By the grace of Allah, these discussions have showed the nature of note and

founded the basis of related injunctions. Now there will be no hindrance in explaining the related rulings.

Note is an asset and not a certificate
This was the answer to the first question with additional discussions, and any further arguments seem unnecessary.

Zakat is Mandatory on Note

[Question 2: When note has value equal to or more than the prescribed limit (*nisab*) and a year passes, would zakat (annual mandatory alms) be payable on it or not?]

With its conditions, zakat is imperative (*wajib*) on note. Reason is that note is a valuable asset itself and is not a certificate or acknowledgement of debt. If note were a certificate, possession of the underlying asset would have been required at least to the extent of one-fifth of prescribed limit for applicability of zakat. Even the intention of trade would not be required in case of note for the applicability of zakat since fatwa is that zakat will be payable on istilahi money until it circulates as currency. In fact, intention of trade is inherent to the usage of note otherwise it would be of no utility. It is stated in *Fatawa-i Qari al-Hidaya*, "Zakat will be payable on fulus till they circulate as currency if their value is at least equal to the price of 200 dirhams [as per Sharia] or 20 *mithqal* (a unit of weight) gold.[15] Notes that come in possession before the end of year shall be included in the prescribed limit of its specie or will be valued for inclusion in gold and silver similar to commercial goods.

Note can be given in Dower

[Question 3: Is it permissible (*jayz*) to stipulate note as dower (*mahr*)?]

Note may be stipulated as dower, and you already know the reason [that it is an asset], when its value is seven mithqal silver at the time of marriage (*nikah*). Any shortfall will be made up as in case of dower in kind.

Amputation would be ordered on Theft of Note

[Question 4: Where a person steals note from a safe place, would it be imperative (*wajib*) to punish him by hand amputation or not?]

Theft of note will attract hand amputation if the related conditions are found. The conditions require that the thief is of sound mind (*aqil*) and adult (*baligh*); he is not dumb or blind; note was kept at a safe place; and other conditions are satisfied. The note must also have the price of at least

10 pure dirhams on the day of theft and on the day of amputation. Again, the reason for this ruling is that note is an asset as already proved.

Note is Compensation for Destruction of Note

[Question 5: Where a person destroys note of another person, would he be required to give note as compensation or equivalent *dirhams* (silver coins) may also be given?]

Destroyer of note will compensate by giving note. He will not be compelled to pay in the form of dirhams because note is a countable thing and two notes of same face values are considered equal if the issuing authority is same. If issuing authorities are different, values may differ even if the state is same. For example, note of Allahabad or Allahabad-Calcutta has more circulation than note of Bombay in North-Eastern states of India and vice versa. Mostly, note of one place is accepted for lesser number of fulus at other places, accordingly, notes of similar face value will not be considered equal unless they have equal circulation.

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Sale of Note

Sale of Note is Permissible

[Question 6: Is sale of note for dirham, *dinar* (gold coin), or *fulus* (copper coins sing. *fals*) permissible?]

Sale of note for dirham, dinar or fals is permissible as practiced in all cities, and you already know its research.

I limited the answer to the above words since discussions in reply to the first question had clarified the issue. When I had finished this book, some ulema quoted an *alim* (individual scholar from ulema)[1] as saying, for discussion rather than for opposition, that Ibn Abidin had added in *Shami*, while explaining the condition for valid sale requiring goods to be valuable asset, "Sale of a piece of bread is void (*batil*) because an asset's selling price must be at least one fals for its valid sale,"[1] accordingly, sale of note should be void, leave aside its being forbidden or improper, because the piece of paper [note] does not have the value of even one fals.

I say that he raised the said issue before reading this book otherwise its contents would have answered his objection. In fact, the answer is in his statement 'the piece of paper [note] does not have the value of even one fals.'

Value is for the present form of an asset rather than its origin

Reason is that the paper [note] now worth 100 or even 1000, and the present condition of a thing is seen instead of its origin.

Muslims customarily sell small and big clay pots from ball and plate to basin, and no one refuses those sales although origin of the pots is clay, which is not an asset.

If original form is considered, the issue of one fals will be self-contradictory because a piece of copper equal in weight to a fals does not

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[1] that is, Hamid Ahmad Muhammad Jaddawi, Allah bless him

value one fals or even half of it. For this reason, some people have the habit to strike coins. They precast like coin-makers and put melted copper in it to strike fulus, and the profit is twice the amount of cost incurred. They declare striking of fulus more profitable than striking of dirhams. In short, if origin is seen even value of one fals is not equal to value of its original form, so fals should not be valuable asset. How could a fals itself be used as price and money then?

While answering the first question, I discussed the ruling about a paper containing rare piece of knowledge. Anyone who sees the paper will believe that the present condition is considered rather than the previous.

An alim is respectable as per Sharia, logic and custom, and it is not thought that by origin he is also among people for whom Allah declares, "Allah is one who has created you from your mothers' wombs such that you were unaware of anything."[2] He is honorable because he has acquired an attribute that makes him respectable for Allah and His creatures. This is also true for the paper in which the rare knowledge has been written. Similarly, printing has created utility and consequent attraction for people in note, and they have accepted it for usage and saving.

Value of asset does not demand recognition as an asset everywhere

Non-acceptance of note everywhere is a baseless objection. No one claims it a condition for valuables. Majority of currencies have this feature. Different fulus that are used here [in Hijaz] are not acceptable in India. Similarly, fulus used as currencies in India are not acceptable in Hejaz. Conversely, note of India is acceptable in Arab; and sale at a slightly lesser price does not contradict acceptance. In fact, I myself exchanged a 500-dirham Indian note for 33 dinars and five dirhams in this city [Makkah] in the month of Dhu al-Hijjah. It was full price of the note because dinars worth 495 dirhams, and five dirhams made up the sum of 500 dirhams. It is at the beginning of chapter on void sale in *Kafaya* that a thing will be asset if all or some people declare it asset.[3] Similar is stated in *Fath*. It is stated in *Shami*, with reference to *Bahr*, from *Kashf al-Kabir* that asset is a thing that has attraction and is capable of accumulation for time of need, and presence of value is proved when all or some people declare it asset.[4]

It is apparent that ruling about fals, which the alim pointed, is unrelated to note.

Research of the minimum price for a valid sale

Before proceeding further, I think it proper to analyze the condition in the objection that an asset must have a minimum price of one fals otherwise its sale will be void. This will prevent others from confusion arising from the limitation which this condition has created for a thing expanded by Sharia.

I say that the origin of this condition is *Quniya*. The condition was copied in *Shami* from *Bahr* and in *Bahr* from *Quniya*.

Few words on the statement in Tanwir al-Absar
Its author's view was followed and overstated by his disciple al-Ghazni so much so that he included this condition in his book *Tanwir* in chapter of miscellaneous sales just before part on original-money exchange, although sources of *Tanwir*, *Ghurar* and *Durar*, are silent on this matter. Al-Alai, the author of commentary (*sharh*) of *Tanwir*, referred back the issue to *Quniya*. In fact, author of *Tanwir* has himself accepted this fact in *Manhat al-Ghaffar*, commentary on *Tanwir*, by stating it and narrating, "It is also from *Quniya*,[5] as the passage before this narration has been copied from *Quniya* in which sale and gift of beat of pigeon in significant quantity is stated as valid."[6]

Some points related to juristic ethics (rasm al-mufti)
Quniya is famous for its weak citations. Ulema have expressed that issues of *Quniya* would not be accepted if they contradict famous books of the fiqh. They expressly declare that if a statement of *Quniya* opposes principles of the fiqh, it will not be accepted until some other authenticated reference is not found in favor. Trust is in book which is the source of copy rather than the copier. Large number of copies does not remove the weaknesses of narration when only a single book is base of all copies. I have given all these discussions in my book on guidelines for mufti, titled *Fasl al-Qada fi Hukm al-Ifta*. For example, it is stated in *Zakhira* that it is recommended (*mustahab*) to stand after *sajda-i talawat* (a ritual), as this issue was earlier copied in *Tatarkhaniya*, *Ghuniya* and *Muzmarat*. Authors of *Bahr* and *Dur* followed them but it was declared weak in *Bahr*. Ibn Abidin stated that reason for the weakness was *Zahiriya* being the only book which had narrated it, and that is why all latter ulema quoted only *Zahiriya* as its source.[7]

Refutation of the statement of Quniya from transmitted sources
It is known that the subject issue of *Quniya* has neither been copied in large number nor is *Quniya* authenticated like *Zahiriya* so its weakness cannot be removed. If the condition had been merely weak, it would have been like rare hadith (*hadith-i shaz*) but it is like contradictory hadith (*hadith-i munkar*). It has both the conditions of a contradictory hadith, that is, opposition of famous books of the fiqh and opposition of the rules of Sharia. The condition opposes famous books of the fiqh because *Fath*, *Shurunbulaliya*, *Tahtawi ala Dur*, *Shami* and other authenticated books of the fiqh state sale of a piece of paper for 1000 as permissible.[8] I prays Allah to bless those authors because they have stated "a" piece of paper [means single paper].

There is another strong and undeniable argument. All our imams have juristic consensus, according to famous narrations from them, and all

texts, commentaries and earlier collections of rulings (*fatawa*) have consensus that sale of one date or one walnut for two dates or two walnuts is permissible. In *Fath* and *Dur*, ulema added that two needles may be sold for one needle.[9] We know that none of these things worth one fals. In Indian cities, a good number of dates are priced a fals, whereas here in Makkah dates are cheaper. It is also true for walnuts, but walnuts have higher price in India, and eight to 25 needles cost a fals in India. This is a clear proof of contradiction by *Quniya* of all famous books and rulings of all imams. Although Ibn Humam has preferred statement of Imam Muhammad al-Shaybani, narrated by al-Ma'ali, that sale of one date for two dates is improper but he said it improper because of the excess on one side rather than for the price of less than a fals. If one type of date is sold for another type of date, neither narration of Imam Muhammad nor the preference of Ibn Humam will be relevant. Even that narration only declares the sale as improper. It still does not support the condition claimed by *Quniya* that sale will be void and will not take place at all.

Refutation of the statement of Quniya from rational sciences

Indian subcontinent is so large that its width is 8 degrees to 35 degrees North of Equator, and its length is 66 degrees to 92 degrees East of Greenwich. In this vast area, majority of poor has economic activities involving sale and purchase of things that have prices of a fals or a fraction of fals like half, quarter or octant fals etc.

Most poor buy vegetable and cooking oil each costing half fals, three common spices cost quarter fals, onion and garlic cost quarter fals, and salt costs quarter fals. From these items, they prepare curry at a total cost of one and three-quarter fulus that can be used two times in a day, once in morning and the other in evening. They buy oil for lamp for half fals that burns from evening till midnight. A large bag of drinking water now costs half fals but recently had the price of one-third of a fals, whereas a box of match costs half fals. For their family, they buy a reasonable quantity of mangoes, the most delicious fruit of the Indian subcontinent called *anab* in Arabic, *anba* in Persian and *a'am* in local language, for half fals and likewise black berries and tamarind pods for quarter fals. Those who eat paan spend one and a quarter fulus daily buying betel leaves for half fals and betel paste, betel nut and edible tobacco each for quarter fals. Tobacco costs half fals. Similarly, a great number of things are sold for parts of a fals and even octant fals or half of that.

If above sales are not permitted at prices less than a fals, there would be severe restrictions. People with limited resources might not survive if the above sales practiced by thousands of Muslims are declared void preventing them from buying anything for less than a fals when their needs can be meet with half fals or octant fals. It will be a heavy burden on them whereas this soft and easy Sharia has come to lessen their burden. In fact, most of the time they would not get that much money since the

curry costing one and three-quarter of fulus would then cost at least eight fulus. Paan users who spend one and a quarter fulus would spend four fulus. Likewise, we can estimate the expected prices of the other things.

If a poor does not have more than two fulus for curry, and we impose eight fulus on him, what should he do? Should he merely eat flour or chew dry bread of barley without any curry that could soften it for eating and help in digesting it. People generally eat curry with bread. If they do not have curry with the bread, it would not be suitable for health and may develop diseases since avoiding an addiction is self-enmity. Alternatively, either he should beg which is disrespectful and forbidden or he should snatch which is abominable and liable to be punished.

The condition will also require shopkeepers, sellers in streets and home deliverers to sell all such necessities for free that do not worth at least a fals and, therefore, are neither asset nor have any price. Why would sellers agree to that condition? Even if they agree, all poor must be given their necessities free of cost because one poor is not preferable over others. This would result in closure of sellers' businesses.

Therefore, there is no alternate to permission for trading of all things including those priced less than a fals. No doubt, the holy Quran permits sale with the unconditional declaration "Allah has made sale lawful,"[10] and with the statement "but if a transaction is according to your mutual consent."[11] Permission of sale transactions has the objective of removing the above problems. Limiting the domain expanded by Allah will result in reverting to those problems. Ibn Humam states in *Fath*:

> If sale had not been permitted as reason for trading ownership of money and goods, there would have raised a need to cheat or beg or people had to wait till death, all of which are clearly unacceptable ways. To beg is insulting and unrewarding effort that no one wants and it also decreases the respect. Sale ensures survival of needful and fulfillment of needs with good administration.[12]

Sharia has not imposed any limitation on sale. Sale transactions have been permitted, which involve exchange of an asset with another asset. I have already described asset as anything that attracts usage and is capable of safety for the time of need. This definition fits to the things stated above and to other things that are bought for half or quarter fals. So claiming sale for less than a fals as void is unacceptable extension over Sharia.

Again, someone might say that Sharia has not fixed value of a fals. Value of fals changes with time and place, and it is not possible to use fals of each place as measure at that place because, as already stated, worth is proved even when few people accept a thing as asset. So it will be imperative to search continuously for the smallest fals of the world. This will be a problem which the rule of Sharia avoids.

It is stated in *Kafaya*, "Sometimes a thing may have price even if it is not an asset; a mole of wheat is not an asset and its sale is not valid because people do not consider it asset, although it is not impermissible by Sharia to utilize it."[13] Similar is stated in *Kashf al-Kabir*, *Bahr* and *Shami* whereas *Fath* has word "moles" instead of "a mole."[14] None of the quoted books has declared that a thing having price less than a fals is not an asset.

Probable reason for the statement of Quniya

A basis for the issue of *Quniya* might be that no currency or price was less than a fals at that time, or the author of *Quniya* might not find any lesser value fixed by Sharia so he declared that anything less than a fals was nothing. This could be similar to ruling that silver and gold less than a habba (a unit of weight) had no price, as stated in *Asrar*.[15] Reason is that those ulema did not find any weight for gold or silver less than a habba. But its value measurement is available to the extent of one-eighth of a habba (*chawal*) in our cities. Currently gold weighing one-eighth of a habba has price of two fulus and is a valuable asset.

Likewise, some ulema declared that volume less than half of a *sa'a* (a cubic measure) is out of measurement, and therefore, selling a thing with the same specie with excess on one side is permissible if measurement is less than a sa'a. On the basis of that particular rule, sale of one jafta (a unit of volume smaller than sa'a) of wheat for two jaftas was declared permissible. Ibn Humam refutes it in *Fath* saying:

> It does not seem justified because objective of declaring riba as forbidden is safety of assets of peoples. So it is imperative to declare sale of two apples for one apple and sale of two jaftas of wheat for one jafta as forbidden. Where measuring units less than half of a sa'a are available, there is no doubt in their adoption. For example, one-fourth and one-eighth of a qadh (a cubic measure smaller than sa'a) are fixed in Egypt. Further, although Sharia has not fixed any measurement less than half of a sa'a for religious financial obligations, like punitive alms (*kaffara*) and mandatory alms at the end of Ramadan (*sadqa-i fitr*), it is not necessary that lesser measures that are known for certainty are rendered ineffective."[16]

This excellent and reasoned discussion of Ibn Humam, has been upheld intact by ulema in *Bahr*, *Nahr*, *Shurunbulalya*, *Dur* and glosses. We apply the same ruling here. According to the given definition of asset, it will be imperative that all assets discussed above that have prices less than a fals are valuable assets. And where currencies less than a fals are available, there is no doubt in their adoption as money. For example, quarter and octant fals are used in our cities. Although Sharia has not mentioned any currency less than a fals, it will not be necessary that lesser currencies that are known for certainty are rendered ineffective. This is what I have, and Allah has knowledge of the correct.

Sale of Note is not Exchange of Goods

[Question 7: Where note is exchanged with clothes, for example, would the sale be simple sale (*bay mutlaq*, sale of goods for money) or barter sale (*bay muqayda*, sale of goods for goods)?]

Since note is istilahi money, its exchange with clothes will be simple sale and not barter sale. No particular note will be required in sale rather it will be a liability as discharged through fulus.

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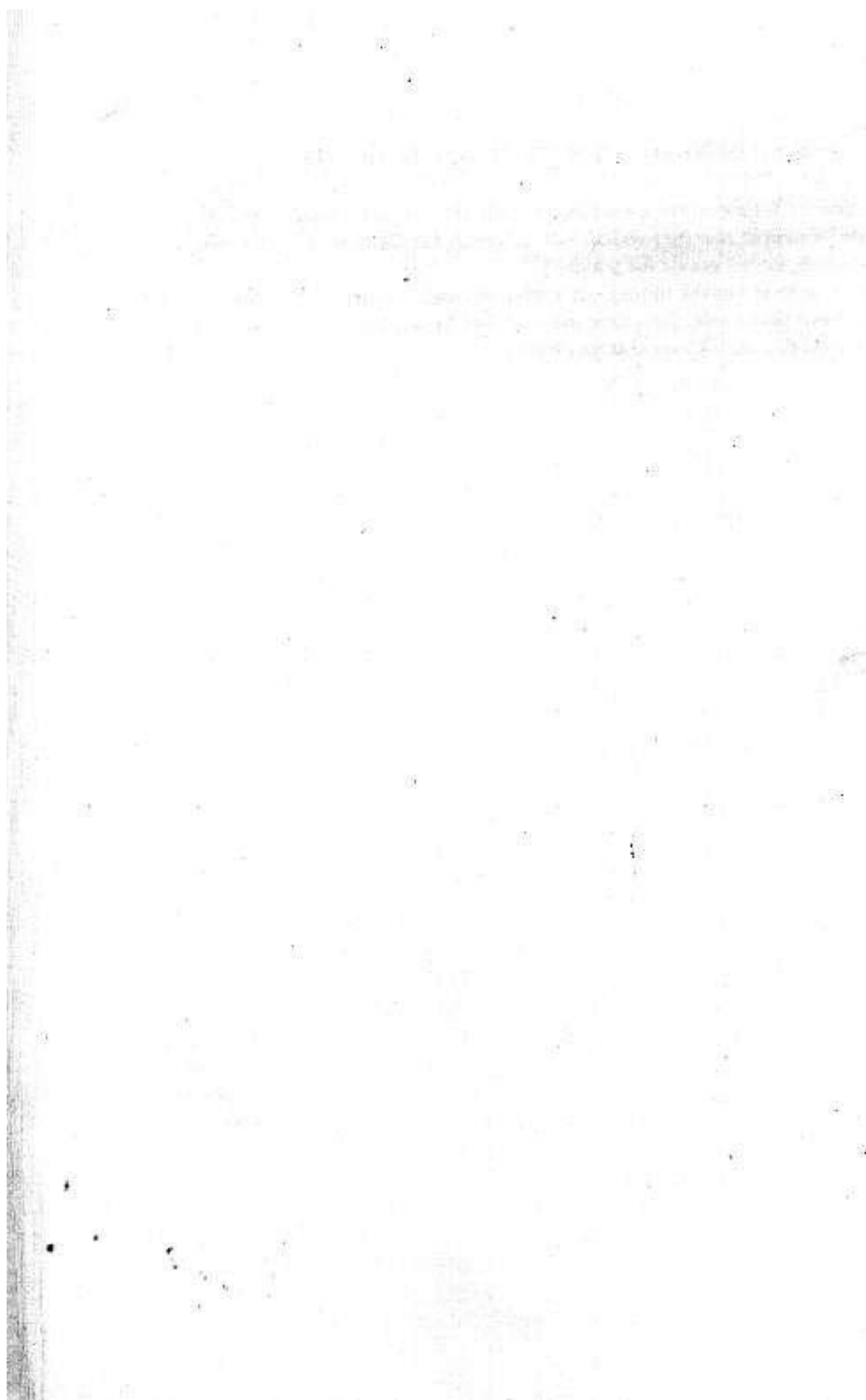
Lending and Credit Sale of Note

Lending of Notes is Permissible and the Repayment

[Question 8: Is it permissible to give note as loan (*qard*)? If yes, would the repayment be mandated in the form of note or dirhams?]

Note may be given as loan (*qard*) because it is a fungible as discussed. The debt will be repaid by giving similar thing (note) since it is a characteristic of debt. In fact, no liability (*dayn*) is repaid except through similar thing, unless parties agree otherwise.

Credit Sale of Notes for Dirhams is Permissible

[Question 9: Is it permissible to sell note on fixed-term credit for dirhams?]

It is permissible to sell note on credit of fixed term against dirhams if seisen (act of taking possession) of note occurs in the same meeting (*majlis*), and the contracting parties (*aqidin*) do not separate selling liability against liability.

Trading of fulus with original moneys without mutual seisen

Research[2] shows that sale of notes for dirhams is not original-money exchange, which requires mutual seisen (*qabdayn*, seisen by both parties), rather it is like sale of fulus for dirhams. Original-money exchange means sale of original money for original money as defined in *Bahr*, *Dur*[1] etc, and we know that notes and fulus are not original moneys. They are moneys

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[2] Means research of permissibly of trading fulus with original moneys with seisen from only one side as opposed to the opinion stated in *Fatawa-i Qari al-Hidaya*.

because of practice among users so long as they circulate as money otherwise they will revert to be articles. Ulema have expressed non-applicability of original-money exchange on istilahi moneys in *Shami*, *Bahr* and *Zakhira* from jurists (*mashaikh*).[2] These are moneys because of circulation (*riwaj*) as money so seisen by one party (*ahad al-badlayn*) is a condition, otherwise the transaction will be forbidden. Reason is that the Prophet has forbidden sale of liability for liability. This rule has been expressed by Imam Muhammad and trusted in *Muhit*,[1] *Hawi Qudsi*, *Bazzaziya*, *Bahr*, *Nahr*, *Fatawa-i Hanoti*, *Tanwir*, *Dur*, *Hindiya* etc, and it is also the benefit of ruling of al-Isbejabi as Ibn Abidin has quoted from him with reference to *Bahr*.[3]

It is stated in *Hindiya* from *Mabsut*, "Where a person buys fulus for dirhams and seisen of dirhams occurs but the seller does not have fulus, the sale will be permissible."[4]

It is stated in *Hindiya* from *Hawi* etc:

> Where a person buys 100 fulus for a dirham and the seller makes seisen of dirham but the buyer does not make seisen of fulus so long that fulus lost circulation as currency, in this case the sale will not be void according to juristic analogy (*Qiyas*). If seisen of 50 fulus occurred and later the circulation ceased, half of the sale will be void; and if circulation continues, the sale will not be invalid and the buyer will make seisen of the remaining fulus.[5] A similar transaction has been stated as permissible in *Hindiya* from *Muhit Sarakhsi*.[6]

It is stated in *Hindiya* from *Zakhira*:

> Where fulus or grains are bought for dirhams, the contract is not original-money exchange, and if seller and buyer separate after making actual seisen by one party, the sale will be permissible. If no actual seisen occurs and one party makes seisen only by order, the sale will be impermissible, whether original-money exchange or not. To elaborate, if a person owes fulus or grains to another and the borrower buys those fulus or grains for some dirhams; now if parties separate without seisen of the dirhams, the sale will be void. It is imperative to remember this rule but people are unaware of it.[7]

Again, it is stated in *Hindiya* from *Zakhira*:

> Where a dirham is given to get a number of fulus and a half-dirham coin, the sale will be permissible. However, if parties separate after seisen by only one party, the sale will be valid to the extent of fulus but void for the half-dirham coin. If even the dirham was not given by the end of the meeting, the sale will be void in totality including half-dirham coin and fulus.[8]

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[1] That is, *Muhit* of Imam al-Sarakhsi

It is stated in *Hindiya*, again from *Zakhira*.

> Where a person buys athing for few fulus and the seisen of fulus occurs; the parties separate andafterwards and the seller finds that some fulus are base and he returns them to get other fulus; now if all the fulus were payment of goods, the contract (*aqd*) will not be void, whether the base fulus were few or a lot and whether they were replaced or not. Where all the fulus were consideration of dirhams, if seisen of dirhams was made and base fulus are returned, the contract will still be valid. Similarly, if all fulus were found to be base fulus, returned and replaced, the sale would be valid even if good fulus have not been taken as yet. But if seisen of dirhams did not occur and all fulus are returned, the sale would be void according to Abu Hanifa, Allah be pleased with him, even if good pure fulus were given in the same meeting. However, Abu Yusuf and Imam Muhammad declare that if pure fulus are exchanged in the same meeting, the sale will be valid otherwise it will be void. If some fulus are found to be base and returned, the sale will be void in those fulus according to juristic analogy. Abu Hanifa declares, according to juristic preference (*Istehsan*), that if the fulus returned are "few" and they are exchanged in the same meeting, the contract will not be invalid. There are many citations (*riwayat*) from Abu Hanifa about the meaning of word "few." One statement is that more than half of total fulus is beyond few and lesser is not. A second citation declares even the half as beyond few, whereas third shows more than one-third as more than few.[9]

I have cited many references from *Zakhira* to show that so far *Zakhira* has supported our view on sale of fulus for dirhams and has not indicated any disagreement. It is notable because I am going to present a contradictory statement from *Zakhira* in the matter of sale of one fals for two fulus.

It is stated in *Dur* and *Tanwir*, "Where fulus are sold for fulus, dirhams or dinars and one party makes seisen, the transaction will be permissible; however, if parties separate without any seisen, the transaction will not be permissible."[10] To conclude, the rule for the issue is apparent and there is abundance of citations in support. Siraj al-Din Qari al-Hidaya has opposed the rule declaring mutual seisen in the same meeting a condition and deferral of seisen as forbidden. A question posted to him stated, "Is sale of a mithqal of gold for a pile of fulus permissible?" He answered,

> Sale of fulus for gold or silver with deferred seisen is not permissible, our ulema have expressed that advance-payment sale is not permissible in two things that are sold by weighing (*mawzun*), like gold, silver and copper, except where the thing receivable in advance-payment sale is a commodity, like saffron, rather than a kind of money whereas fulus are money and no more a commodity.[11]

Al-Hanoti objected to the opinion of Siraj al-Din in reply to a question regarding credit sale of fulus for gold. He stated, "The sale is permissible if at least one party makes seisen because according to *Bazzaziya* seisen by one party is sufficient in purchase of 100 fulus for a dirham."[12] He added,

"Same rule applies to sale of gold or silver for fulus, as stated in *Bahr* from *Muhit*,[13] so one should not get deceived by opinion given in (Siraj al-Din's) *Fatawa Qari al-Hidaya*."[14] This objection was answered in *Nahr* saying, "By 'sale' Siraj al-Din intended to say advance-payment sale because fulus have an aspect similar to money, and advance-payment sale of money with money is not valid, for the reason that fulus are not commodities (*uruz*), seisen by one party was considered sufficient."[15] I say that this is the benefit of Siraj al-Din's words "our ulema have expressed that advance-payment sale is not permissible in two things that are sold by weight" as quoted above.

Ibn Abidin has not restricted his answer to the above [reply in *Nahr*] saying that the opinion of Siraj al-Din is based on the understanding from *Jami* of Imam Muhammad in which mutual seisen is stated as a condition. He adds that opinion of Siraj al-Din will not be objectionable from the statement of *Bazzaziya* which was based on *Mabsut* of Imam Muhammad.[16] A little before this narration, Ibn Abidin has cited from *Zakhira* and *Bahr*.

> In chapter on original-money exchange of *Mabsut*, Imam Muhammad has stated issue of sale of one fals for two determinate (*mutayan*) fulus without condition of mutual seisen, whereas in *Jami*, he has stated that mutual seisen is a condition. Some of jurists did not correct his second ruling (in *Mabsut*) that mutual seisen with determination was a condition of original-money exchange, which is not the subject here. And other jurists corrected it because fulus are commodity from one aspect and money from the other aspect. So from one aspect, excess on one side is permissible, and from the other aspect, mutual seisen is a condition.[17]

I say that I have a strong reluctance in accepting the opinion of Ibn Abidin which he has written, following *Zakhira* and *Bahr*, that the statement of *Jami* proves the condition of mutual seisen [in sale of one fals for two fulus]. When I referred to *Jami*, I found out that Imam Muhammad has narrated as follows from Abu Yusuf who has narrated it from Abu Hanifa,

> Where two ratals (a cubic measure) of fat is sold for one ratal, one egg for two eggs, one walnut for two walnuts, one fals for two fulus or one date for two dates hand to hand, such that both are determinate, the transaction will be permissible. This is also the opinion of Abu Yusuf whereas Imam Muhammad declares sale of one fals for two fulus as impermissible but sale of one date for two dates as permissible.[18]

Opinion of Imam Muhammad that it seisen be 'hand to hand' is used as an evidence [in support of stating mutual seisen as a condition], but one who has served Fiqh knows that these words do not mean actual mutual seisen by hand to hand. Ulema have interpreted these words as "determinate" in the famous hadith about riba. It is stated in *Hidaya* that words "hand to hand" in the hadith mean things that are mutually determinate [determined by both parties and liability remain on none side],

as narrated by the companion Ubada Ibn Samit, Allah be pleased with him.[19] This is valid because the companions (*sahaba*) described mutual seisen as a condition only for original-money exchange, and all other transactions in which riba is possible only determination is a condition, as stated in *Hidaya* etc.[20] It is stated in *Tanwir* that assets in which riba is probable only determining the asset is sufficient, and mutual seisen are not required except in original-money exchange.[21] It is stated in *Dur* that even when wheat is sold for wheat and both are determined before parties separate without mutual seisen, the transaction will be permissible.[22]

Few more words on his statement

If the words of Imam Muhammad stated in *Jami* are taken to mean mutual seisen, mutual seisen will be a condition not only in exchange of fulus with fulus but it will be also apply to exchange of dates, walnuts, eggs by those ulema who declare the condition as applicable to all those transactions, like *Nahr*, *Dur* etc. Reason is that all those transactions have been stated in the same manner especially in *Jami* in which the condition is written after exchange of dates whereas exchange of fulus is stated before dates.

Addition of more words on his statement

And this is not the opinion of any our imams, so it is imperative that words "hand to hand" are taken to mean determinate; and word "determinate" from Imam Muhammad is taken as interpretation of words "hand to hand" otherwise word "determinate" [in his statement] will be useless and without any benefit because mutual seisen already includes determination, and subsequent statement of "determinate" would be redundant. This is the reason for which al-Marghinani excluded the words "hand to hand" and only copied the word "determinate" in *Hidaya* from *Jami*. He quotes [Imam Muhammad, as stated by Badar al-Din Ayni in *Banaya*] as saying, "Sale of one egg for two eggs, one date for two dates and one walnut for two walnuts is permissible, and [sale of] one fals for two determinate fulus is permissible.[23]

Hence, there is no support in *Jami* for the claim of those seniors [about mutual seisen]. Even if it is assumed, an apparent and undeniable opinion also exists as given in *Mabsut* of Imam Muhammad, and a possible opinion cannot stand against his expressed opinion. Therefore, his opinion given in *Mabsut* should be trusted; and the guidance is from Allah.

Few words on statement of Ibn Abidin

You should know that this entire discussion so far was in view of the ruling of Ibn Abidin with the objective to show benefit of the statement of *Jami*. In fact, the opinion of Siraj al-Din does not require support from the statement of *Jami* to prove mutual seisen. Neither opinion of Siraj

al-Din claims it[4] nor does his statement depend[5] on the statement of *Jami* because he has declared credit as forbidden which makes neither mutual seisen nor even mutual determination imperative.[6] For example, a transaction to sell a cloth for one dirham cash involves neither credit nor mutual determination. Mutual determination will make credit forbidden because objective of credit is to facilitate acquisition whereas determinate itself means already acquired.

Few more words on his statement

If opinion of Siraj al-Din were supported in this manner from *Jami*, it would have a justification[7] and remained protected from the objection.

I say that even the condition of mutual determination applies only to assets in which riba is possible (*amwal al-riba*) that are things sold by volume or weight and do not include things that are sold by counting.

It is stated in in *Fath* etc in chapter on advance-payment sale where it states, "It is impermissible only in assets in which riba is possible when these are exchanged with the same specie, and things sold by counting are not assets in which riba is possible."[24]

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[4] Because he is claiming it as advance-payment sale and Ibn Abidin turned it towards original money exchange.

[5] Because advance-payment sale is actually not permissible in fungibles whether in things for which mutual seisen is a condition like advance-payment sale of money for money, or otherwise like advance-payment sale of goods for money.

[6] It would made ascertainment imperative if ascertainment on both sides were imperative to avoid credit, and this is not the case rather sometimes both conditions are absent such that neither credit nor ascertainment on both sides is found, as stated in the example.

[7] That it were a cause of the ruling given in his fatwa about impermissibility although here it happened because of original-money exchange rather than advance-payment sale. It falls within the ambit of what has been mentioned in *Hindiya* with reference to *Muhit* that borrower of grain buys the grain from lender of the grain for 100 dirhams. It is permissible when the similar grain is purchased which is owed by him [rather than the same grain that had been borrowed] and pays the price in the same meeting otherwise it will be forbidden since parties separate leaving liabilities on both sides. It further states, "It is also the ruling for everything measurable by volume or weight except dirhams, dinars and fulus when they are payable under liability [refer *Hindiya*, vol. 3, p. 205]. Hence, it also declared fulus among things that are like dirhams and dinars, not permissible to be purchased when they are due as liability even if price is paid in the same meeting. The correct ruling is the one the author has mentioned from *Hindiya* with reference to *Fatawa-i Zakhira* that except in original-money exchange, the impermissible is that neither of mutual seisen is actually transferred even if seisen by one side is by order [like payable under liability is also in seisen by order] but if seisen by one side is actually made, the transaction is permissible. Similar is mentioned in *Shami* [*Rad al-Muhtar*] with reference to *Wajiz Kurduri*. In short, declaring it original-money exchange would separate it from the ruling expressed by our ulema in numerous books of fiqh. And Allah knows the best.

As in the explanation of quotation of *Kanz* stating "when neither of two [same specie and measurement by volume or weight] is present, both [excess and credit] are permissible" it is stated in *Bahr*, "When the measurement [by weight or volume] and same specie both are absent, excess and credit both are permissible; so credit sale of one cloth of Herat for two clothes of Mard is permissible, and credit sale of chestnuts for eggs is permissible.[25]

Under the passage of *Kanz* that "except for original-money exchange neither determination nor mutual seisen is necessary," it is stated in *Bahr*:

> Its discussion is one which al-Isbejabi has given stating that when a thing measurable by volume or weight is sold for another thing measurable by volume or weight [respectively], whether specie are same or different, the sale will not be permissible except when both are determinate things that have been contracted whether present or absent but the things should be in the ownership of seller.[26]

Reason for declaring mutual seisen a condition in exchange of fulus has been stated to be the same that where one determinate fals is sold for two indeterminate fulus, the seller will have the option to keep the determinate fals and demand one other fals from the buyer. Alternatively, the seller may give the determinate fals and get it back with another fals since two fulus are receivable from the buyer. Seller's own asset [one fals] will return to him but the second fals will remain without consideration. Similarly, where two determinate fulus are sold for one indeterminate fals, the buyer would take both fulus and give one fals payable by him from two received, and the other fals will remain without consideration, as stated in *Fath* and, similar to this is stated in *Inaya* etc.[27]

Clearly, this reason does not exist in credit sale of a dirham for fulus and credit sale of note for dirhams. Therefore, the best justification for opinion of Siraj al-Din is the one given in *Nahr* in which case it will be a rare quotation from Imam Muhammad [in *Jami*], as we will discuss in a while. If this justification is not accepted, the opinion of Siraj al-Din will remain unsupported and without any previous authentic supporter or a support from earlier books.[8] The justification created for his opinion by Ibn Abidin has already been addressed and cannot stand the consensus of earlier jurists with chief ruling from Imam Muhammad in *Mabsut*, which is the decisive opinion.

Few words on statement of Siraj al-Din

I say that the opinion of Siraj al-Din has two deviations from the rulings of Hanafi fiqh. One deviation from what our ulema have expressed that the practice [of usage as money] has excluded fulus from weighable assets and included in countable assets. The other deviation is from what ulema

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[8] Means through the method that Ibn Abidin has mentioned and if it is diverted towards original-money exchange, the weakness in it has already been shown.

expressly ruled that the status of fulus money is voidable by practice of seller and buyer; and voiding the status as money will not void the practice that fulus are countable assets. These rulings are given in *Hidaya* etc. It is stated in *Hidaya*:

> According to Abu Hanifa and Abu Yusuf, status of fulus as money is settled between seller and buyer by their practice since others have no authority (*wilayah*) over them; hence, they may also void the status of fulus as money in their practice. And when they void the status of fulus as money, the fulus will become determinate and will not become thing sold by weight since practice of their dealing by counting is intact.[28]

In a while, I will discuss Imam Muhammad's acceptance that status of fulus as money is void in advance-payment sale. He refuses it in sale for want of evidence. So when all of our imams have juristic consensus on the ruling, advance-payment sale of dirham or dinar with fulus is neither advance-payment sale of two moneys nor advance-payment sale of two weighable assets. It is rather advance-payment sale of a countable asset [fulus] having similar units with a weighable asset [dinar or dirham], which is not wrong according to juristic consensus of our ulema. To conclude, there appears to be no strong reason for the opinion of Siraj al-Din, however, he may be more correct than me.

Even if his opinion is accepted, we have right to say that opinion of Siraj al-Din is applicable only to fulus and not currency notes which are not weighable assets. The paper pieces [notes] are not sold in custom by weight so the legal standard [of measurement by volume or weight] is absent as it is present in a fist from grains [volume] or a mole from gold [weight]. Hence, our point is secured from any opposition. And all praise is for Allah.

Advance-payment Sale of Note is Permissible

[Question 10: Is advance-payment sale (*advance-payment sale*) of note permissible whereby dirhams are paid in advance, for example, on the term that note(s) of a particular description would be received after a month?]

Advance-payment sale is permissible in notes. It is sometimes claimed as impermissible because note is money and advance-payment sale is not permissible in moneys, as already quoted from *Nahr*.

Research of permissibility of advance-payment sale of fulus

Research shows that this claim is based on a single rare citation from Imam Muhammad otherwise texts of fiqh show the rule that advance-payment sale is permissible in fulus. Advance-payment sale is not

permissible in original moneys, which are only gold and silver. Reason is that seller and buyer have no authority to void status of gold and silver as moneys, which are original moneys, as opposed to things that are istilahi moneys. It is stated in *Tanwir* and *Dur*:

> Advance-payment sale is permissible in everything whose attribute can be established, like pure or base, and whose measurement can be identified, like volume or weight. The statement that the thing must not be original money excludes dirhams and dinars because advance-payment sale is not permissible in them; Imam Malik, Allah be pleased with him, has opposite view in this issue. If it is a thing saleable by counting, its units should be more or less identical, for example, walnuts, eggs and fals.[29]

Ibn Abidin has corrected the statement saying, "It is better to write 'fulus' because 'fals' is a singular noun and not a common noun.

Some jurists have pointed an opposite opinion from Imam Muhammad in this matter because he refused sale of two fulus for one fals. However, the famous opinion from Imam Muhammad is like opinion of Abu Hanifa and Abu Yusuf and the difference is given in *Nahr* etc.[30] This indicates that *Nahr* quoted it to provide a reason for the opinion in *Fatawa-i Qari al-Hidaya* so that it has support even though it was not trusted in *Nawadir*. It is stated in *Hidaya*:

> Advance-payment sale of fulus is permissible by fixing number of fulus, according to Abu Hanifa and Abu Yusuf but not Imam Muhammad because fulus are money. Abu Hanifa and Abu Yusuf give the reason that fulus have status as money due to practice of seller and buyer, which they can void if they agree.[31]

It is stated in *Fath*:

> Advance-payment sale is permissible in fulus by counting. Imam Muhammad has also stated the same in *Jami* without any opposition; so this is the famous ruling from Imam Muhammad. Some jurists argued that this ruling is from Abu Hanifa and Abu Yusuf and not Imam Muhammad because he disallowed sale of one fals for two fulus since fulus are money; and when they are money, advance-payment sale is not permissible in them. However, advance payment sale [in fulus] is permissible in famous opinion from Imam Muhammad. He differentiates sale and advance-payment sale saying that in advance-payment sale, it is mandatory that the thing promised to be taken must not be money. Therefore, when he ruled the advance payment sale of fulus as permissible, he supplementary voided the status of fulus as money because advance-payment sale of fulus is possible only in the manner these are transacted, that is, by counting. This is opposed to sale that can be applicable on money. Hence, there is no reason to void their status as money in sale, and consequently, excess is not permissible and sale of one fals for two fulus stands impermissible.[32]

Few words on the statement of Fath al-Qadir

I say that there is an objection in this difference because Imam Muhammad is not convinced with the opinion that status of fulus as money could be voided byparties to the contract where all others have consensus over presence of the status as money. It is stated in *Hidaya*:

> Sale of one fals for two determinate fulus is permissible according to Abu Hanifa and Abu Yusuf but Imam Muhammad declares it as impermissible because the status of fulus as money was set by the practice of all people, therefore, the status cannot be voided only by parties to a contract; this causes fulus to remain money and indeterminate so it would be like sale of one fals for 2 indeterminate fulus and like sale of one dirham for two dirhams. Abu Hanifa and Abu Yusuf give the reason that the status of istilahi moneys as money is proved between parties to transaction by their practice, as discussed.[33]

This entire discussion has been repeated and upheld in this manner by Ibn Humam in *Fath*, then how could Imam Muhammad say that parties' agreement for advance-payment sale of fulus would mean acceptance of voidance of the status as money. Rather it is his cancellation of previous ruling by him, which was actually not narrated from him but added by jurists. This difference indicates that it was not the reason by Imam Muhammad, and he himself has opinion that parties to contract may void status of fulus as money between them if their intention to void the status is proved. The intention is already proved in advance-payment sale because the thing agreed to be taken in advance-payment sale can never be money. Therefore, their agreement for advance-payment sale of fulus is evidence of voiding the status as money. However, this intention is not proved in sale because it is not necessary in sale that the thing sold is not money, and it is not proved that parties have voided the practice. Hence, fulus remain money and consequently indeterminate, and the sale is void. In this manner, this discussion would sometime consider the opinion of Imam Muhammad such that his opinion is preferred in the issue of sale; therefore, one should be careful.[9] And Allah knows the best.

[9] This is indication towards the answer that need for correction of a contract is sufficient requirement that may not be required by the contract itself. For example, if someone sells one dirham and two dinars for two dirhams and one dinar, the transaction will be taken to imply a permissible situation by considering each specie corresponding to the other specie [one dirham will be taken to correspond to one dinar and two dinars will be taken to correspond to two dirhams] although in the contract itself there is no refusal for corresponding the same specie. And doubt of riba is like actual riba. So the reason is the correction of the contract, and its citations are numerous.

4

Face Value and Price of Note

Sale of Note for more than Face Value is Permissible

[Question 11: Is it permissible to sell a note for more than its face value, for example sale of 10-dirham note for 12 or 20 dirhams or similarly for less than its face value?]

It is permissible to sell a note for more or less than its face value [denomination] as the parties may mutually agree. Reason is that the valuation of notes with printed amounts has originates from practice of people, as already discussed, and nobody has authority over practice or terms of a buyer and a seller as already proved from *Hidaya* and *Fath*. They have the right to fix any value lesser or higher than face value.

This was sufficient answer for a prudent person. I gave this fatwa several times [see Appendix A]. This is also the fatwa of many senior ulema of India, like Maulana Irshad Husayn Rampuri, Allah bless him, and others [see Appendix B].

Opinion of Abd al-Hay Lucknawi

No one opposed this ruling except a person[10] from the city of Lucknow [see Appendix C] who was a well-known personality. His opposition remained unknown to me until some summarized pages published after his death as the collection of his fatwas. I wish if I had talked to him during his life, he would have changed his opinion because he used to accept corrections whenever he was convinced with counter arguments. Now I present additional discussions to help the seekers of correct to accept the rule of Sharia on the issue.

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[10] That is, Abd al-Hay Lucknawi

First refutation

I say that, firstly, all our ulema have explicitly ruled that effective cause (*illah*) of riba as forbidden is the specific measurement (*qadr*) by volume or weight with same specie (*jins*). If the measurement and specie both are same, excess and credit both will be forbidden. If only one condition is found, excess will be lawful but credit will be forbidden. This is a general rule which is not contradicted in any case, and all rulings about riba are based on it. We know that neither the measurement nor specie is same in notes and dirhams. Species are not same because note is paper whereas dirham is silver. Similarly, measurement is not same because dirhams are weighable assets whereas note is measured neither by volume nor by weight. So where note are exchanged with dirhams, excess and credit both will be permissible. It is also clear that note is not among assets in which riba is possible (*amwal al-riba*).

Second refutation

Secondly, it is stated in *Shami*, "Where excess is forbidden, credit is also forbidden and not vice versa; and where credit is lawful, excess is also lawful and not vice versa.[1] Since I have proved with undeniable evidence, in reply to question number nine, that credit sale of note is permissible, it is imperative that excess will also be permissible.

Third refutation

Our master, the Prophet, Allah's peace and blessings upon him, says, "Where species are different, sell as you like."[2] And no one can disallow a thing permitted by the Prophet.

Fourth refutation

Fourthly, even a beginner knows the above three arguments. I now move towards arguments where Lucknawi might raise some objections, and I will clarify the ruling accordingly.

Excess is permissible even in assets in which riba is possible

Everyone knows that sale of an asset having market price of 10 dirhams for 100 dirhams or one fals is permissible with the consent of the buyer. Sharia has not prescribed any limit for it. Allah says, "But if a transaction is according to your mutual consent."[3]

It is stated in *Fath*, "If someone sells a piece of paper for 1000 [dirhams], the sale will be permissible and not improper."[4] We all know that price of a paper is neither 1000 dirhams nor 100 or even one dirham. Reason is that market rate and price are two independent things. Seller and buyer are not bound to follow market rate while deciding the price. They have option to mutually agree a price several times the market rate or one-hundredth of that.

A probable confusion of Lucknawi and three replies

Lucknawi might claim that this principle is for commodities whereas note is money in practice. To his claim, I would reply as follows.

Firstly, your word "practice" itself reveals the answer. Parties to a contract are not bound by practice of others.

Secondly, even if it is assumed that parties are not empowered to void status of currency as money, there is evidence for impermissibility of variation in value of istilahi money from practice. We know that number of fulus equal to one dirham is always fixed by custom (*urf*), and even a beginner knows that one dirham is equal to 16 half-octant-dirham coins instead of 15 or 17. However, this custom and the fact that fulus are istilahi moneys do not prohibit seller and buyer to agree for a lesser or higher value. It is stated in *Tanwir* and *Dur*:

> Where a person gives one dirham to a money changer and demands fulus of half dirham plus a [silver] half-dirham coin wanting a habba, the transaction would be permissible. Silver metal in the dirham weighing equal, to the silver coin will be the counter value of that coin, and the remaining silver of the dirham will be the counter value of the fulus received.[5]

In the words from *Hidaya*, "If purchaser says, 'Give me fulus against half of the dirham plus a half dirham coin wanting a habba in exchange of that dirham, the transaction will be permissible'."[6]

Sale of a dirham for a dinar or even 1000 dinars is permissible

Thirdly, gold and silver are original moneys, and no one can void their status as money. We know that a dinar always has price equal to many dirhams. You will not find any dinar that has price equal to a dirham. Despite this fact, our imams have stated sale of one dinar for one dirham as valid and free from riba. Reason for this ruling is nothing but the principle that where species are different, excess will be permissible. And the difference in species of note and dirham is obvious. It is stated in *Hidaya*, *Dur* etc' "Sale of two dirhams and one dinar for one dirham and two dinars is valid, and each specie will be consideration of the other specie. Likewise, sale of 11 dirhams for 10 dirhams and one dinar is valid."[7] Ibn Abidin added, "10 dirhams will be consideration for 10 dirhams whereas the eleventh dirham will be the counter value for the dinar."[8] If sale of one dirham for one dinar is valid and riba-free although one dinar has market price equal to 15 dirhams, why would sale of 10 dirham note for 12 dirhams involve riba.

Another probable confusion of Lucknawi

Lucknawi might claim as follows. Although the transaction will be valid in the above rulings, it will be improper; and since improper is disallowed, the transaction will not be lawful although it would be valid. The same principle applies to our subject sale [of note for dirhams]. It is stated in *Hidaya*:

> Where silver is sold for silver or gold for gold, and one side is lesser in weight but the lesser side includes something which has price equal to the difference, then the sale will be permissible and not improper. Where the added thing does not have price up to the difference, the sale will be permissible but improper. And where the added thing is priceless, like clay, the sale will not be permissible because of riba since the excess on one side will have no corresponding counter value.[9]

This discussion has been upheld in *Fath* and other commentaries of *Hidaya*, and in *Bahr*, *Shami* etc; and we know that usage of the unconditional word "improper" is taken to mean prohibitive improper (*makruh-i tahrimi*). And Abd al-Halim has cited this issue in his gloss (*hashiya*) on *Durar* and marking its details to *Fath* wrote:

> When you know this issue, the practice in Sultanate of Ottoman of selling one qursh (*qirsh*, a silver coin) for 80 Ottoman dirhams will not be permissible because qursh is more in weight [than 80 Ottoman dirhams]. If something is added with the dirhams, like one fals, the sale will be permissible but improper. Hence, it is imperative for those who are careful to equally weigh the both sides or to ensure that the thing added with the dirhams has the price equal to difference of qursh over dirhams so that the sale is not improper.[10]

Since Abd al-Halim has expressly ruled it as imperative [and opposite of imperative is prohibitive improper], the subject sale will be prohibitive improper which constitutes a sinful act.

I say that, in the above lines, I have given details of the confusion and probable objection from Lucknawi, in a manner better than what he could possibly give. Now I respond to the possible confusion with the support from Allah.

First reply to the confusion

Firstly, the difference of original and istilahi moneys must not be forgotten. Value of gold and the fact that value of gold is several times the value of silver are original attributes that have no nexus to any assumption or agreement of any person. In exchange of one dinar for one dirham, the excess of value will be apparent to everyone. This is opposed to note where value of note, for example equal to 10 dirhams, is merely because of practice among people otherwise that paper neither values a dirham nor one-tenth of a dirham. So if origin is seen, excess is present even in sale of 10-dirham note for 10 dirhams, whereas if practice is considered, practice of others is not binding on a seller and a buyer as I have cited from *Hidaya* and *Fath*. Where people have declared a note as equal to 10 dirhams in value by their terms although its original value is a fals or lesser, no one can prevent seller and buyer from agreeing for its value equal to 12 or more dirhams, or 8 or fewer dirhams. Hence, the rule presented as objection is not analogous to our subject sale.

Second reply to the confusion

Secondly, the rule given in the objection applies to sale of a specie against the same specie. Narration from *Hidaya* states, "Where silver is sold for silver and gold for gold, and one side is lesser in weight."[11] It is not about sale of gold for silver. Where value on one side is lesser considering market price, the excess on one side in exchange of gold for gold will be apparent, and one would logically decide whether or not the thing added on the lesser side equals the value of excess. On the contrary, where note is sold for dirhams, excess will not arise since both species will be different. It is stated in *Fath*, "Riba is the excess in consideration that is declared right of a party to the contract where there is no stipulation in the contract about the counter-value against the excess; and you know that absence of counter-value is established when a thing is compared with the same specie."[12]

Our master, the Prophet has declared, "Where two things are of different species, sell as you like."[13] This is the permission from the Prophet, the beholder of Sharia, and he is the guide and the guardian. Whosoever contradicts any permission of the Prophet, his opposition will revert to him and will not be heard.

Third reply to the confusion

Thirdly, only Imam Muhammad has ruled the sale, in which value of the added thing does not equal the value of the difference, as improper, whereas Abu Hanifa, the founder of our fiqh, has ruled that the sale will not be improper. After quoting this issue in *Fath*, Ibn Humam adds, "Imam Muhammad was asked as to how he felt about the ruling of Abu Hanifa; he replied, 'As heavy as a mountain, and Abu Hanifa has not declared it improper'." Rather it is explicitly ruled in *Fath* that there is no harm in this sale according to Abu Hanifa.[14] I will present an example of this transaction from *Bahr* with reference to *Quniya* in which al-Baqali has stated that both Abu Hanifa and Abu Yusuf have the opinion that the sale is not improper. It is stated in *Hindiya* with reference to *Muhit Sarakhsi* from Imam Muhammad:

> If a dirham is sold for another dirham, which is lesser in weight then the other, and the lesser accompanies some fulus, the sale will be permissible. But, I consider it improper because its permission would make people habitual of it, and they might enter in impermissible transactions too. Abu Hanifa said that it was not improper because the fulus will be consideration of the extra silver in the heavier dirham.[15]

Ruling is as per Abu Hanifa's opinion unless there is need

In short, the narration from Abu Hanifa is famous and well known, and it is a general rule of our fiqh that fatwa is always according to the opinion of Abu Hanifa except in certain situations, for example where Muslims

have an established contrary practice. I have discussed this topic in sufficient detail in *Al-Ataya al-Nabwiya* under the book of marriage.

Fourth reply to the confusion

Fourthly, the strongest argument is that the improper[11] stated in the subject objection is only non-prohibitive improper (*makruh-i tanzihi*).

Applications of the word 'improper'

You must not be deceived by unconditional word "improper" since jurists (*fuqaha*) use this word many times unconditional and intend meaning that is common to both prohibitive improper and non-prohibitive improper. They sometimes use it unconditionally and mean non-prohibitive improper, and this is not hidden from those who have spent their lives in

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[11] Imam Muhammad is the narrator of our fiqh. He states in *Jami al-Kabir*, a book among *Zahir al-Riwaya* [his six famous books]: Where base dirhams are of several kinds, containing one-third, two-third or half copper as the element, there will be no harm where one kind of dirhams is exchanged for another kind provided mutual seisen is hand-to-hand. Silver of the first will be counter-value for the copper in the second, and copper in the first will be counter-value of the silver in the second, similar to the sale where a person sells copper and silver for silver and copper. But credit sale will be impermissible because both silver and copper are sold by weight and both are moneys so credit will be forbidden. As far as sale of same kind of dirhams with excess one side is concerned, if they have silver as the predominant element, sale with excess on one side will not be permissible because lesser element is not considered, and it will be like pure silver [dirham] for which sale requires equal weight on both sides. If copper is predominant element, or copper and silver both are equally present, sale with excess on one side will be permissible by considering, as already stated, copper against silver and silver against copper, and the transaction will be undertaken hand-to-hand because silver is also present on both sides along with copper that would have required determination only. It is stated in *Zakhira*, in part four under book of sale, "For the same reason, jurists declared hand-to-hand sale of one base dirham, known as adli, for two base dirhams as permissible."

I say that if excess is permissible, sale of the one dirham for two dirhams will be similar to sale for 100 or 1000 such dirhams. Now suppose, a base dirham of a particular kind having two-third element as copper is equal in weight to three-fourth of a base dirham of second kind having half the material as silver. Consequently, two-third of the first dirham is equal in weight to half of the second dirham. Where one base dirham of first kind is sold for 10,000 base dirhams of second kind hand-to-hand, it will be necessary that one specie is considered against the other [that is copper in first against silver in second and silver in first against copper in second]. This would result in sale of silver of one base dirham of the first kind for the copper of 10,000 base dirhams of the second kind. What more excess is required? Imam Muhammad has clearly stated that the sale has no harm. So if it is improper, it will be non-prohibitive improper at the most. No further argument is possible after clear expression from the head of our fiqh, Abu Hanifa, and we should adhere to his opinion. And Allah is the provider of guidance towards the correct.

service of Fiqh. Ulema have ruled the meanings of this word many times in different chapters of their works. It is stated in *Shami*, just before the chapter on betrayed:

> The ruling by ulema, except al-Tahtawi, that placing footstep or sitting on graves is improper means non-prohibitive improper in all situations other than *qada i hajat* (prayer for fulfilment of a wish)[12] and at the most the word improper is used in a meaning which is common to both prohibitive improper and non-prohibitive improper, and this happens at many places in their books; and rulings of jurists for acts that are improper for salat also fall in this domain.[16]

It is stated in *Dur* under the opinion of the author that it is improper to make a child sit to pass urine in the direction towards qibla, "This improper is common to prohibitive as well as non-prohibitive improper."[17] While stating improper acts for ablution, Ibn Abidin has written, "Word 'improper' without conditional adjective is not always taken to mean prohibitive improper."[18] Just before this narration in the same chapter, where the author wrote improper acts for ablution, he has written, "Improper is opposite of desirable, and is sometimes taken to mean forbidden, prohibitive improper or non-prohibitive improper." Later, he has cited from *Bahr*:

> Improper acts stated in this chapter are of two types. First type is prohibitive improper. Where word "improper" is unconditional, it is taken to mean prohibitive improper. Second type is non-prohibitive improper. And a lot of time word "improper" is left unconditional and means non-prohibitive improper as explained in *Sharh Muniya*. So when jurists use the unconditional word "improper," we should examine arguments and evidence. If evidence for impermissibility is substantial, the improper will be prohibitive improper except where some other evidence to contrary is found. If the evidence does not show impermissibility and does not require absolute avoidance, the improper will be non-prohibitive improper.[19]

I say that the statements of texts (*matun*), like *Tanwir*, declaring imamate of a slave as improper, are also like the preceding issue.[20] The author of *Dur* declares the said imamate as non-prohibitive improper.[21] While stating the reason for ruling it as non-prohibitive improper, Ibn Abidin has written, "Imam Muhammad stated in *Mabsut*, 'I prefer imamate of others [to a salve];' this has been cited in *Bahr* with reference to *Mujtaba* and *Me'raj*."[22]

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[12] This is the opinion supported by Ibn Abidin, and the correct ruling is that placing footstep or sitting on graves is prohibitive improper. I have given the research of this issue in *Al-Amar bi Ahtiram al-Maqabir (1298)*, Ibn Abidin himself agreed to this ruling in *Shami* stating that ulema have explicitly ruled that walking on new footpath in-between graves was forbidden. (Ibn Abidin, *Shami*, sec. minor ablution, vol. 1, p. 229)

First arguments that excess in value is not prohibitive improper

Considering the above discussion, it is imperative to identify reason for inclination towards any type of improper, as added in *Bahr*. Upon examination, it is concluded that ulema declare the subject sale as improper for two reasons, and none of the two results in prohibitive improper. At the most, the given reasons will make it non-prohibitive improper. It is stated in *Inaya*, "It is improper for two reasons: it is a legal device (*hila*) to avoid riba, so it will be like *inah* (sale and buy back of a thing at lesser price) because excess is obtained using a device; or people will become habitual of such sales and start doing the same in impermissible transactions too."[23]

After copying the second reason, it is stated in *Fath* that "similar rule is narrated in *Muhit*, and that some ulema declare it improper because it is a device,"[24] as given in the first reason. After citing both the reasons, the author of *Inaya* finally limited the cause of his ruling to the first reason, that is, "It is improper because it will be a device to avoid riba."[25] The author of *Kafaya* also based his ruling on the first reason, "It is improper only because it will be a device to avoid riba and obtain excess; hence it is improper like inah, which is improper for the same reason."[26]

Clearly, the objective of the second reason is to abstain from a permissible merely because of fear to enter impermissible transactions. It is within the ambit of extreme care, and absence of extreme care does not result in prohibitive improper. Imam Muhammad himself declares that it will result in people becoming habitual and applying it for impermissible transactions too. His own statement proves that this particular sale is permissible and improper is only for the fear.

As far as the first reason is concerned, it is clear that using a device to avoid riba is running away from riba, which is not disallowed rather entering a transaction involving riba is disallowed. Our ulema have taught various devices to avoid riba that result in obtaining gain without any riba. In fact, Qadikhan developed a separate section for this purpose in his collection of fatwas [*Khaniya*] and stated that the section was for methods to avoid riba.

Devices to avoid riba

1. Receivable-purchase-sale device

A person has 10 dirhams receivable from another. He wants to make them 13 dirhams in a fixed period. Ulema state that the creditor should buy something from debtor for those 10 dirhams and sell that back for 13 dirhams on, say, one-year credit. His objective will be achieved and he will be saved from forbidden. A similar arrangement is quoted as practiced by the Prophet that he directed to do it.[27]

Similar is stated in *Bahr* with reference to *Khulasa al-Nawazil* of Faqih Abu al-Lais.

2. Purchase-sale device

Where a person asks for credit from another such that creditor gets 12 dirhams for every 10 dirhams, the debtor should present a thing to the creditor and say, "I sell this to you for 100 dirhams." The creditor should buy it, make seisen of the thing and give money to the debtor; then the debtor should ask the creditor to sell that thing for 120 dirhams. The creditor should sell it so that debtor gets 120 dirhams and his product both and owes 120 dirhams to the creditor. A more relaxing and careful way is that the debtor should tell the creditor that whatever negotiation and condition were agreed between them, he terminates that, and then parties enter the arrangement.[28]

3. Sale-sale-purchase device

Where the thing is owned by the creditor and the debtor does not have anything. The creditor wants to give 10 dirhams and receive 13 dirhams after a fixed period. The creditor should sell a thing to debtor for 13 dirhams and give the possession to the debtor; then the debtor should sell the thing to a third party and give the possession to that person. The third party in turn sells the thing to the creditor for 10 dirhams and gives the 10 dirhams received from the creditor to the debtor. In this manner the price payable by third person will be discharged, and the thing will revert back in the possession of the creditor. The creditor will have 13 dirhams receivable from the debtor under a single promise.[29]

4. Sale-sale-cancellation-purchase device

Creditor should sell something to the debtor against 13 dirhams for a fixed period and give the possession. The debtor should sell the thing to a third party; then he should cancel the sale with the third party whether possession was given or not. Afterwards the debtor should sell the thing to the creditor for 10 dirhams. The debtor will get 10 dirhams. The creditor will have 13 dirhams receivable from him. And the thing will reach to the creditor. Although the creditor has repurchased the thing sold by him before paying the price, this method will be permissible in this case because another transaction occurs in-between, that is, between the debtor and the third party.[30]

Qadikhan added another device stating that:

Creditor sells something to the debtor on credit and gives the possession to him; then the debtor sells the thing to a third party for a price less than purchase price. The third party in turn sells the thing to the creditor for price equal to his purchase price so that the thing reaches to the creditor. The third party should take the sale price and give that to the debtor so the debtor gets the money and the creditor gets the profit

Few words on the statement of Khaniya

I say that this additional device is the same as the third device stated above. Qadikhan says:

> This device is called inah; inah that has been stated by Imam Muhammad. Jurists of Balakh said that inah was better than sale transactions practiced in their markets. Abu Yusuf is quoted as saying, "Inah is permissible, and its user will get reward from Allah (*thawab*) because it involves running away from a forbidden, that is, riba.[31]

5. Borrowing-repayment-waiver device

> A person has 10 pure dirhams. He wants to sell them for 12 base dirhams but this will not be permissible because it will involve riba. If he wants to use a device, he should borrow 12 base dirhams from buyer and pay 10 pure dirhams to him; and then the buyer waives the remaining two dirhams. The arrangement will be permissible.[32]

6. Receivable-repayment-waiver device

> A person had 10 base dirhams receivable under a promise. When the promised time arrives, the debtor brings nine pure dirhams and says that they are in repayment of the 10 dirhams; then although his act is impermissible because of riba, a permissible manner is to take nine dirhams in settlement of nine dirhams and waive the remaining one dirham. If the debtor fears that creditor will not waive the one dirham, he should give a fals or some small thing for one dirham with nine fine dirhams. It will be permissible and his fear will be removed.[33]

These lines have benefits that will not remain hidden, and I will refer back to them in upcoming discussions.

Inah is only non-prohibitive improper

For our purpose, it is sufficient that the first reason shows the subject sale as similar to inah, and ulema have stated that it was also improper for the same reason [for which inah is improper]. We know that inah is not more than non-prohibitive improper so our subject sale would also be ruled similarly. The words of Imam Muhammad "as heavy as mountain" should not frighten you.[34] He has given similar or even stronger comments against inah which has proved to be only non-prohibitive improper. It is stated in *Shami*, from *Tahtawi ala Dur*, from *Hindiya*, from *Mukhtar al-Fatawa*, with reference to Abu Yusuf that inah is permissible and its user will get reward from Allah. Imam Muhammad said, "This sale has hate in my heart as big as mountain since riba seekers have invented it." The beloved Prophet says, "If you trade using inah and walk behind bulls, you would be disrespected, and your enemy will win against you."

It is stated in *Fath*, "Inah is not improper, it is only against the best practice (*khilaf-i ula*) because it prevents the good behavior of allowing loan."[35] This ruling has been upheld in *Bahr*, *Nahr*, *Dur*, *Shurunbulaliya* etc.

It is stated in *Fath*, "This sale [inah] is not improper because numerous companions used and praised it and did not declare it as involving riba."[36]

Difference of mursal in Legal Theory and in Hadith sciences

I say that Abu Yusuf's statement "numerous companions practiced it" is hadith with unidentified narrator from the Prophet (*hadith-i mursal*) according to the principles of fiqh. Identifying these according to kinds and naming them like *mursal, munqata, maqtu* and *madal* are technical terms of the experts of Hadith sciences (*muhadiththin*) for the objective to point out various kinds. As far as ruling is concerned, it is same to us, that is, if a reliable person (*thiqa*) narrates a hadith-i mursal, the hadith will be acceptable. I have given research of this topic in *Munir al-Ain fi Hukm-i Taqbil al-Abhamin (1313)*, and it is also stated in *Musallam al-Sabut* etc. Who would be more reliable than Abu Yusuf? So if its practice and praise are proved from numerous companions, we will not deviate from it because fiqh of Abu Hanifa is to follow companions. And no doubt the Prophet has directed us to follow them.

A test of the hadith about inah

As far as the hadith "when you trade using inah"[37] is concerned, the hadith has been quoted by Imam Ahmad, Abu Dawud, Bazzar, Abu Yali and al-Bayhaqi from Nafay who quoted it from Abd Allah Ibn Umar, Allah be pleased with him. Ibn Hajr says that it has weak certification, and Imam Ahmad has a better certification of it.[38] Certification in citation of Abu Dawud is Abu Abd al-Rahman Khurasani Ishaq Ibn Usaid Ansari. Ibn Abu Hatim stated that he was not famous. Abu Hatim stated that he should not be referred. Zahbi stated that hadith could be quoted from him;[39] he again referred him and counted the said hadith as a contradictory hadith (*hadith-i munkar*) narrated by him.[40] It is stated in *Taqrib*[41] that he was weak in narrating [hadiths].[42] In sum, the hadith is without full authentication. Al-Suyuti has written detail of its authenticity in his *Jami al-Saghir*, and this hadith has been quoted with various certifications for which al-Bayhaqi reserved a special section in *Sunan* in which he has described the causes.

Usage of a hadith by mujtahid confirms its validity

I say that it is apparent from the citation of *Fath* that Imam Muhammad has declared the said hadith as supporting evidence. When this is the situation the hadith is definitely authentic because when a mujtahid uses a hadith as evidence, the hadith will be authentic, as written by ulema including Ibn Humam in *Tahrir al-Usul*.[43]

Clearly, there is no evidence in the hadith for prohibition of inah. The order of the Prophet that "when you walk behind tails of bulls"[44] means farming and agriculture as explained by Ibn Humam saying, "Because at that time they would not perform jihad and become cowards."[45] In fact,

the same hadith narrated by Abu Dawud states, "When you will hold tails of bulls, engage in agricultu re and stop jihad."[46]

The best means of earning

And we know that agricultu re is not prohibited, and it is the best means of earning after jihad. Some ulema state trade as the second best, agriculture as the third and industry as the fourth, as narrated in *Wajiz Kurduri*. When opposition of inah was supported by the said hadith in *Inaya*, Saadi Effendi said, "I say that if this argument is upheld, agriculture would also be opposed."[47]

In *Hidaya*, *Tabayin*,[48] *Dur* etc, the only reason given for the improper is that it involves avoiding laudable act of allowing loan. It is added in *Hidaya*, "By following a condemnable act of stingy."[49] We know that that avoidance of lending is not a prohibitive improper. It is stated in *Fath*, "There is no harm in it [inah] because one part of consideration is against the promise, and it is not mandatory to always give loan but it is rather a good act [on the part of the lender]."[50] It is stated in *Inaya*, "Refusal to grant loan is not improper, and being stingy to seek profit from trade is similar otherwise sale for profit would also be improper."[51]

Negotiation in trade is Sunna

I say that trading means seeking profit with the help of Allah, and trade negotiation is Sunna. The Prophet declared, "Usurption is devoid of respect and divine reward."[52] This hadith has been transmitted from Imam Husayn by authors of *Sunan* (a group of books of hadiths), from Imam Hasan by al-Tabrani and from Caliph Ali by al-Khatib, Allah be pleased with them. Hence, the severest ruling for the subject sale could be that it is non-prohibitive improper, otherwise it has been established that the companions practiced and praised it.

Abd al-Halim, a contemporary jurist of al-Shurunbulali, writes in his gloss on *Durar*, "The narration from Abu Yusuf states that inah is permissible and an act to be rewarded by Allah because it avoids a forbidden [riba], and using a device to avoid forbidden is recommended (*mustahab*) and because numerous companions of the Prophet practiced and praised it."[53] The writing style indicates that the words "device to avoid forbidden is recommended" are also from Abu Yusuf. And Allah knows the correct.

This discussion so far was the first argument that our subject sale is not prohibitive improper.

Second argument

All our ulema have explicitly ruled that where the condition of either the measurement or species is absent, excess is permissible. Dinar and dirham or dinar and fulus are not same species so excess on one side is lawful and cannot be prohibitive improper.

Excess in value has four forms all of which are permissible
Research shows that where two species are exchanged, excess by measurement has one of the following four forms, and all of them are permissible. First, the more valuable thing is more in measurement too. Second, the more valuable is lesser in measurement but still has more value or even several times more value, for example, dinar against dirham. Third, the more valuable thing is so little in measurement that it is also lesser in value. Four, the more valuable thing is in lesser quantity but results in same value of both things.

All the ulema have only ruled that where species are different, excess [on one side] is permissible. They have not restricted permission to any particular form so it will apply to all of the above four forms. If excess were prohibitive improper, only the fourth form would have been lawful. There could be one more form, that is, where two things of different species have both same measurement and same value. It is imperative that the transaction in this form will also be lawful since ulema have permitted excess in measurement, which in this case is attached to the excess in value.

Third argument
The Prophet declared, "Where species are different, sell as you like."[54] After this permission no one can rule it sinful and prohibitive improper because the Prophet has allowed it.

Fourth argument
It has already been shown from *Khaniya* under the sixth device that where a fals is given for the extra dirham, the sale will be permissible and safe.[55] Clearly, there could be no safety if it had been a sin.

Fifth argument
Excess, for example, in exchange of dinar and dirham or fulus and dinar is that of value. If the subject sale were prohibitive improper because one of two parties would get a thing which is more in value and profit, it would be imperative to declare equal weights of pure and base coins as prohibitive improper provided value of base coins is sufficiently more than pure coins to avoid usurpation by people of each other's asset, like its value is twice or many times the value. Reason is that the same cause of ruling which results in prohibitive improper would be present, and ruling goes with the cause. But Sharia has ordered equal weights of pure and base coins. Similarly, consider the case where the increase in value of silver after workmanship increases its price to several times the price of silver pieces or dirhams of equal weight. Now the equality in weight will cause prohibitive improper [if excess in value is the reason for prohibitive improper]. But exactly these equal weights [of silver with and without workmanship] are imperative according to Sharia.

Prohibitive improper is sin andnon-prohibitive improper is allowed
Now the objection wouldmean that, Allah forbid, Sharia has ordered a sin. Reason is that prohibitive improper is disallowed and committing a prohibitive improper act is sin although it is a minor sin (*gunah-i saghira*) as stated in *Bahr, Dur* etc.[56] and if it is committed habitually, it will become a major sin (*gunah-i kabira*). Certainly, Sharia is highly decent and noble and cannot order a sin and declare it as imperative. On the contrary, non-prohibitive improper acts are among allowed (*mubah*) and not sin. Sometimes Prophets intentionally did non-prohibitive improper to disclose that a particular act was permissible. It is notable that earlier Lucknawi issued a wrong fatwa that non-prohibitive improper is a sin and repetition of non-prohibitive is major sin. It was a serious mistake that I pointed out in his *Juml al-Mujliya An al-Makruh-i Tanziha Laysa bi Ma'asiya (1304).*

An argument that Sharia has refused to take comparative value into account where species are same will not be beneficial here. Reason is simple. It is the first point in discussion that if Sharia considers excess of value (on one side) as sin, why it would refuse to take value into account, although it would defeat the objective of Sharia. The objective is to save the assets of people, and the base of assets is their value. It would allow riba seekers to achieve their wrong objective since their objective relates to the value. When they get excess value, their purpose will be served, and excess of measurement will not be important for them. So it is proved that Sharia does not consider excess in value. Consequently, it becomes impossible to prove excess in value as prohibitive improper from Sharia. This was the point I wanted to prove.

Sixth argument
All texts show the juristic consensus on permissibility of sale of one fals for two [determinate] fulus. It is stated in *Bahr*, "The objective is not merely to declare sale of one fals for two fulus as lawful rather it is to declare excess as lawful."[57]

Sale of one fals for 100 determinate fulus is permissible
Even where one fals is sold for 100 determinate fulus, the sale will be lawful according to Abu Hanifa and Abu Yusuf.[58] What stronger and more explicit is needed to prove the permissibility of excess in value. And all praise is for Allah. Yes, sometimes lawful may combine with non prohibitive improper, as ruled by our ulema.

Seventh argument
Inah itself is based on excess in value and is not restricted to getting 12 or 13 dirhams,[59] or 15 dirhams,[60] for 10 dirhams rather two-time and four-time excess is also permissible. It is stated in *Fath*:

> One method of inah is to sell an article to the debtor for 2000 on promise. Afterwards, the creditor sends a third party to buy that article from the debtor for the third party itself for 1000 cash. The third party buys it, gets possession and then sells it to the creditor asking him to pay the price, 1000 [dirhams] cash, on his behalf to the debtor, his seller. So the creditor gives 1000 to the debtor and receives the 2000 on promised date.[61]

Based on above, where two-time excess is permissible, several times will also be permissible. I say that the involvement of the third party is unnecessary. The creditor may sell the article worth 1000 dirhams to the debtor for 2000 dirhams. The debtor sells it in market for 1000 dirhams so that the commodity does not revert to the creditor.

Few words on the statement of Fath al-Qadir

It will avoid return of the article to the creditor which Ibn Humam declared prohibitive improper although there is juristic consensus on permissibility of buying a sold article for a lesser price if a third party acts as the intermediary. Ulema have stated such a sale as sinful. Various devices to avoid forbidden (riba) have been quoted with reference to Qadikhan; and if sin exists, device would be incomplete. As a result, Abd al-Halim wrote in his gloss on *Durar*, "Apparently, it is non-prohibitive improper whether the given article returns, entirely or partly, to the creditor or not."[62]

Eight argument

Where the executor (*wasi*) intends to buy the property of the orphan [the legatee] under his charge or sell his own property to the orphan, ulema declare the sale as permissible only if it will result in profit of the orphan. The amount of profit will be two times of the value for immovable property and one and a half times for movable property as stated in *Khaniya* and *Hindiya*.[63] Where the executor intends to sell the property of a minor orphan to someone else, and neither the minor needs the price nor the testator has any liability to be discharged from the sale proceeds of the property, the condition for permissibility will be to for a price which is twice. It is stated in *Hindiya* with reference to *Muhit Sarakhsi* that fatwa should be according to this [rule].[64] So Sharia itself has directed the excess in value.

Ninth argument

As quoted from *Fath* and other authentic books of fiqh, "Sale of a piece of paper for 1000 [dirhams] is permissible and not improper."[65]

Tenth argument

It is stated in chapter on riba in *Shami* with reference to *Zakhira*, "Where a customer gives a bulk of wheat to the backer so as to receive breads over a period of time, a permissible method will be to sell a ring or knife for, say, 1000 mounds of breads."[66] Here the difference in value of ring or knife

and breads is notable. There are innumerable similar citations in the books of fiqh.

The reason for continuing this discussion after sixth argument is to prove that ruling by ulema to add something on lighter side is unconditional whether it is money or good and whether it is asset in which riba is possible or not.

Replies for the opinion of Abd al-Halim

First reply

I say that, firstly, where a thing is imperative to be on safe side, it is not in itself imperative [as defined in Sharia]. Clearly, abstaining from a thing that is not only bad to avoid fear of sin is a precautionary act. The precaution is ensured in the manner stated by Abd al-Halim. Hence, this is imperative to achieve safety because imperative means imperative to achieve an objective.

Second reply

Secondly, often recommended (*mustahab*) is often termed as imperative in common language. Among examples of such situations is the following statement of *Dur*, "There is nothing wrong in announcing greatness of Allah (*takbir*) after Eid prayers. It is a practice among Muslims since the times of early Muslims (*salf*) and it is imperative for us to follow them."[67] Ibn Abidin quotes another example stating, "It is said in common language, 'your right is imperative upon me'."[68]

A Muslim enjoys six imperatives on another Muslim

The following hadith from *Bukhari* is stated in *Fath* in 'chapter on guidelines for a cadi' under the words "Cadi should attend the funerals and visit patients:"

> A Muslim has six rights that are imperative upon another Muslim. If he fails to discharge any of these rights, he will deprive his [Muslim] brother of a right that was imperative. These rights are greeting with salaam when they meet, accepting invitation for dining or replying on call, saying 'may Allah bless you' (*ya-rahmak Allah*) when he thanks Allah upon sneeze, visiting him while he is sick, attending funeral prayers, and advising him on his request. Abu Ayub Ansari, Allah be pleased with him, has transmitted this hadith.[69]

Ibn Humam states:

> In this hadith, the word "imperative" should have a more general meaning than this word has in the terminology of fiqh. Clearly, salaam should be imperative at start while funeral prayer is a mandatory act (*fard*). So the hadith actually proves these rights for a Muslim whether recommended or imperative according to the fiqh.[70]

Accordingly, this should also be the meaning of "imperative" in the ruling of Abd al-Halim because of the above evidences. If the word

imperative is not taken to imply the lateral meaning, the opinion is his understanding without any supporting citations, and his thought is not authentic especially where evidences to the contrary have also been shown from Sharia.

Third reply

Thirdly, if opinion of Abd al-Halim is not taken to mean as discussed above, it will also be contradictory to his own statement which he has written just one page after his subject opinion.

A practice in the Sultanate of Ottoman and the related ruling

He reports a practice prevailing in Sultanate of Ottoman during his times as follows:

> Old base dirhams that have silver as predominant element are exchanged for new pure dirhams. After circulation of the new dirhams, use of old ones is declared illegal. The old dirhams were base coins so much that a larger dirham, called qursh, is equal to 120 old dirhams while a dinar is equal to 240 old dirhams. When the new dirhams become common, value of a qursh is fixed to 80 new dirhams and that of a dinar to 120 new dirhams. This [situation] results in disputes among people about transactions entered while old dirhams were used. On this issue, ulema of Castanopile gave fatwa that where one-third of a debt has been repaid, the debtor should pay 80 new dirhams or one qursh to lender for every 120 old dirhams, and one dinar or two qursh for every 240 old dirhams. Later, our teacher Asad Ibn Sa'ad al-Din Effendi (Sa'adi Effendi), Allah bless him, during his times issued fatwa that dinars having price equal to price of old dirhams at the time of contract be given. For example, one dinar should be paid for every 240 old dirhams. He declared the payments by new dirhams or qursh as impermissible. He also expressed existence of riba or its doubt in the first fatwa.[71]

Abd al-Halim adds:

> The earlier fatwa was also valid and provided an easier method and extended scope of repayment. It was valid because if old dirhams had same circulation as dinar and qursh, repayment of debt on same terms by the borrower was proved; and debt would require repayment by asset of equal value whether old dirhams, qursh or dinar as explicitly ruled by jurists in case of coins having similar circulation. Hence, when old dirhams lost acceptance and new dirhams came in circulation, and that resulted in drop in price of dinar and qursh, the debt would also be discharged to that extent. This had enlarged the scope of repayment and created an easy method since the debtor might repay by any of the kinds [of currencies] possessed by him. If the other [second] fatwa was applied, [there would be difficulty because] the debtor sometimes would not have dinar, and sometimes entire or outstanding part of the debt would not amount to a dinar. This would make repayment difficult despite the fact that money acceptable at the time of contract still had acceptance and its circulation had neither decreased nor declared prohibited. Why would borrower be

> forced to repay by dinar. Hence, it was clear that the first fatwa was valid and easier and there wasno problem in it. However, as claimed by the other [second] fatwa, ifexistence of riba was accepted in repayment through new dirhams or qursh; or weight of both was not same or known as required by rules, the riba could be avoided by adding something with new dirham or qursh, for example a fals, as is not hidden [to those who know Fiqh].[72]

This issue has been discussed in *Dur* etc. Author of *Dur* has adopted the fatwa of Saadi Effendi that requires the debtor to repay by gold,[73] whereas Ibn Abidin has preferred the view supported by Abd al-Halim.[74] The summary of his argument is as follows: Firstly, he does not accept that the debtor had to repay specifically by old dirhams that would result in riba upon repayment by new dirhams, old dirhams or qursh when weight was not equal to old dirhams. In fact, equal value was payable that he had option to estimate in any of three currencies. When one currency lost acceptance, he could repay by any of the two other currencies. I say that this clarifies that their ruling "one-third debt" was a confusion that arose from apparent change in number of dirhams. Based on that [confusion], they ruled repayment of 80 new dirhams for every 120 old dirhams otherwise there was no difference in value. Secondly, even if repayment specifically by old dirhams is assumed necessary, the riba will be avoided where something, for example one fulus, is added to new dirham or qursh. Abd al-Halim issued this fatwa to people declaring it an easy method with no difficulty, and it would not have been easy had it been prohibitive improper. Therefore, there is no escape from the meaning I have taken. And the guidance towards the correct is from Allah. These [potential] objections and confusions have been discussed only because of the benefits contained in the answers.

Fifth refutation

From this discussion, it is clear that 10-dirham note can be sold for 12 dirhams and even for a dinar, dirham or fals without any riba or even doubt of riba as against the thought of Lucknawi. It is because doubt in forbidden things also attracts the same ruling as certainty, as stated in *Hidaya* etc. If the doubt existed, it must be forbidden rather than merely prohibitive improper. I have already proved with evidences that the subject sale is not even prohibitive improper, leave aside forbidden. So the subject sale does not involve either riba or doubt of riba.

The largest certification presented by the opponents is that note[13] is absolutely same as dirham, and there is no difference between a dirham

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[13] Rather Lucknawi thought that where 100-dirham note is sold, the objective will not be to receive the price of that paper [note] rather the objective will be to sell 100 dirhams and receive the price. I say as follows.

Sixth refutation

Firstly, if his claim was true, sale of note for dirhams would not be permissible at all because it would be sale of 100 dirhams for 100 dirhams. Since dirhams are all identical so sale of 100 dirhams for 100 dirhams is simply useless, and Sharia does not allow a useless activity. It is stated in *Ashbah*, "A contract will be valid if it is useful; a useless contract is invalid; so sale of a dirham for a dirham is not permissible where both dirhams are equal in weight and characteristic as stated in *Zakhira*." (*Al-Ashbah wa al Naza'ir*, Ibn Nujaym, vol. 1, p. 325)

Seventh refutation

Secondly, if Lucknawi goes to market and watches that Zayd has sold a note to Amar and Lucknawi asks Zayd, "Did you say to Amar that you sold him 100 dirhams." Zayd would reply, "No, I said that I sold that note to you, Amar." If Lucknawi asks Zayd, "Did you intend to sell your 100 dirhams for 100 dirhams of Amar?" Zayd would reply, "No, rather I intended to exchange my note with his dirhams." If Lucknawi asks Zayd, "Did you take price of your dirhams?" Zayd would reply, "No, rather price of my note." If Lucknawi asks Zayd, "Will you give him 100 dirhams out of your wallet?" Zayd would reply, "No, I will give him my note." At that time, Lucknawi would realize the difference of the two [note and dirham].

Eight refutation

Thirdly, I wish if Lucknawi knew the difference of a sold thing and a non-existing thing because most of the time seller of note would not have equivalent dirhams or even a single dirham. If he intends to sell 100 dirhams, he would be selling a non-existing thing and such a sale would be void. The Prophet has prohibited it.

Ninth refutation

Fourthly, Zayd sells note to a person who needs note to send it in post since sending money in the form of note is easier and less expensive in the form of dirhams. If Zayd tries to give 100 dirhams instead of 100-dirham note, the buyer will not accept at all. The buyer will tell Zayd that he wanted to buy note and already had dirhams so he did not need to buy dirhams from Zayd. At that time, Lucknawi would realize that claiming their objective from sale of note as sale of dirhams is a blame on buyer and seller of note.

Tenth refutation

Fifthly, where the seller of note does not give note to the buyer against dirhams but rather gives dirhams, his act will amount to cancellation of sale and not the delivery of the thing sold to buyer. All these are common sense arguments.

In sum, the 100 dirhams that he has claimed are such sold a thing that neither the words of sale and purchase are used for them nor does the intention of receiving and delivering them is present. And where seller gives them or tries to give them to the buyer, he will refuse to accept them, and it would not amount to delivery of the sold thing. In fact, often seller does not have the dirhams. There could be no similar sold thing in the world like this, which is not contracted, priced, intended or exist but has been sold. We seek protection of Allah from such thoughts.

Eleventh refutation

Sixthly, the effort of Lucknawi to differentiate fulus and note is incorrect and wrong where he claims that if a person buys a thing for a dirham or borrows a dirham and gives equivalent fulus, the seller or lender will have the option to

and a note. To support their view opponents point out that since people do not differentiate in transacting with dirham or note, sale of 10-dirham note for 12 dirhams will be same as sale of 10 dirhams for 12 dirhams, which is certainly riba, andeven if it is not riba, it will be forbidden for similarity with riba.

Answer to the basis of Lucknawi's confusion

I say that this doubt is more misfit and weaker. We all know that istilahi moneys are valued with reference to original money. In fact, all currencies including dinars are measured with reference to dirhams, and they have value relative to dirhams. For example, one sovereign dinar equals 15 dirhams, one octant-dirham coin equals one-eighth of a dirham, one quarter-dirham coin equals one-fourth of a dirham, half-dirham coin equals half of a dirham, 16 half-octant-dirham coins are equal to a dirham, and notes have face values equal to 10 dirhams, 100 dirhams and so on.

Thirteenth refutation

Where currencies have equal value and circulation, buyer has the options in payment

Where those currencies have equal value and circulation, users do not differentiate in transacting with any of them. First, where a person buys a piece of cloth for one Sovereign and pays one Sovereign or 15 dirhams, his payment choice will neither make any difference and will not be contrary to the agreement, and neither the seller nor anyone else will object to any of the two choices. Second, one octant-dirham coin and eight fulus are transacted similarly. No one differentiates transacting with either of them. Third, one quarter-dirham coin and 16 fulus are treated similarly. Fourth, where a person buys a thing for a half dirham coin, he may pay one half dirham coin, two quarter-dirham coins, four octant-dirham coins, one quarter-dirham coin and two octant-dirham coins, one quarter-dirham coin, one octant-dirham coin and eight fulus, three octant-dirham coins and eight fulus, one quarter-dirham coin and 16 fulus, one octant-dirham coin and 24 fulus, or all 32 fulus. All these nine combinations are same for the users.[14] They do not differentiate among these combinations because all are equal in value and circulation.

This option is not merely based on custom. Sharia has also given right to buyer to pay any of these combinations. If seller does not accept any particular combination and demands payment in another combination,

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accept or reject them, and government cannot force him to accept the fulus, as opposed to note.

Twelfth refutation

Seventhly, we will discuss in a while as to whether there is a source and support for this claim about the said option or not. And Allah is the guide towards the correct.

[14] Using the new half-octant-dirham coin, the half dirham can now be paid in 36 different combinations; and all of them are equal.

this will be unjustified and unacceptable insistence. Under the statement of *Tanwir* that "word money without any qualification means the most circulated currency of the city; and if currencies have different values but equal circulation, the contract will be void,"[75] Ibn Abidin states, "But if circulation is not equal, whether value is different or not, the contract will be valid, and the most circulated currency will be meant; similarly, if value and circulation both are equal, the sale will be valid, and the buyer will have the option to pay by any of the two currencies."

Example of equal circulation and value is given in *Hidaya* by words "two and three," which authors of its commentaries objected saying that "three" has more value than "two." The objection was replied in *Bahr* saying that "two" meant two coins worth one dirham and "three" meant three coins worth one dirham. I say, as a result, where a person buys an article for a dirham, he may pay a dirham, two half-dirham coins or three one-third-dirham coins provided each option is equal in value and circulation. Similarly, in our times, a dinar may be a single full dinar, two half-dinar coins or four quarter-dinar coins, and all have same value and circulation.

This [discussion] also clarify the ruling related to purchases for qursh. Qursh is actually a silver coin having price equal to 40 Egyptian qatas [a currency], called nisf in Egypt. All currencies are priced in relation to qursh; some currencies equal 10 qursh or more or less than it. So where an article is bought for 100 qursh, the buyer may pay either with qursh or with other coins equal in value to qursh like riyal or bullion. No one assumes that purchase is against the silver piece named qursh. Rather they will mean qursh and other coins, having different individual values but same circulation, if they have the required worth [value]. The objection that "different values but equal circulation" is the cause for voidance [of the contract] will not arise because there will be no difference in value of price when these currencies have been measured with reference to qursh. The objection would exist if currencies were not measured with reference to qursh, for example, an article is bought for 100 dinars and different types of dinars are found having "different values but equal circulation." Where currencies are measured with reference to qursh, all of them will be treated equal in value and circulation. As discussed, the buyer will have the option to pay any of the currencies. It is stated in *Bahr*, "If the seller demands a particular type of currency, the buyer will have the option to give another [currency] because the refusal of the seller to accept the offered currency will be unjustified insistence where there is no difference in values."[76]

These are all simple and well-known principles. Where purchases for qursh can by paid through qursh or riyal, or full dinar or its fractions and non acceptance by seller is considered unjustified, no further argument can be staged against equality and indifference among currencies. No one

can doubt that species of qursh or riyal [silver] and dinar or gold coins [gold] are same, or that excess is not permissible while selling one of these specie for the other; or one is sunk into the other so any excess in their exchange [of the two species] is forbidden at least for resemblance with riba although excess is permissible in exchange of different species, according to explicit juristic consensus of our ulema. In fact, the Prophet declared "Where species are different, sell as you would like."[77]

I have already presented the research about absence of riba and even its doubt in exchange of a dirham for a dinar. So when this ruling is for qursh or riyal and dinar or gold coins, although they all are original moneys and have one condition of riba since these are weighable, then there could be no confusion about permissibility of exchange of dirham with note because note is money only by practice. Measurement of value of note is a practice that is not binding on seller and buyer. Furthermore, note does not have any of two causes of riba: same specie (*jins*) and measurement by volume or weight (*qadr*). So it will be unreasonable to declare the sale [of a note for a price other than its face value] as impermissible. We seek forgiveness from Allah. I hope this is the sufficient ruling on the subject.

Fourteenth refutation

If Lucknawi still does not accept any evidence against his claim that note is so similar to dirham that it is sunk into dirham, a question arises that whether as a result of this similarity or absence of difference (1) note has actually or by order becomes silver dirham, or (2) the principle of Sharia for exchange of dirham with dirham applies to sale of note for dirham, as Lucknawi claimed saying "as if they are 10 dirhams that have been sold for 12 dirhams," or (3) neither of 1 and 2 [that is, note is neither actually nor by order of Sharia same as dirham].

If his claim is number (3), it will lack objectivity and meaning. If his claim is either number (1) or (2) or both, he himself would be permitting riba where 10-dirham note is sold for 10 dirhams because Sharia does not order values to be equal even in exchange of dirhams with dirhams. According to the juristic consensus, pure dirham and base dirhams are same and Sharia requires equal weights for this purpose. It will be imperative for him to sell silver weighing equal to weight of the note, which would not be more [in weight] than octant or quarter dirham. And where he gets silver weighing more than the weight of the note, he would be receiving and permitting riba according to his own ruling.

Fifteenth refutation

If he asserts that the claimed similarity requires equal values, it will be an ignorance of rules of Sharia. Equivalent value is not a condition from Sharia even for dirhams. How would it apply to note for similarity with dirhams if it is not a rule for dirham itself?

Even if note is wrongly assumed as same to dirham, it will not be same as gold [dinar] because two different species cannot be same, and sale of 10 dirham note for 12 dinars should not attract the impermissibility which exists in its sale for 12 dirhams because note is neither actually nor by order same to gold. The conclusion from the ruling of Lucknawi would be that sale of 10-dirham note for 12 dirhams would be forbidden because it brings excess without the counter value but sale of the note for 12 dinars would not be wrong [according to his ruling] because species would not be same either actually or by order. What comments may be offered to such a fatwa [of Lucknawi], what foresight it contains, and how far it conforms to the objective of Sharia relating to protection of the assets of people pursued by prohibiting riba.

In sum, the objection of Lucknawi to our subject sale is unsupported by principles of Sharia and evidence. His opinion is based on his assumption for which Allah has not provided any support. And all good is from Allah whom we trust, and we pray for His help.

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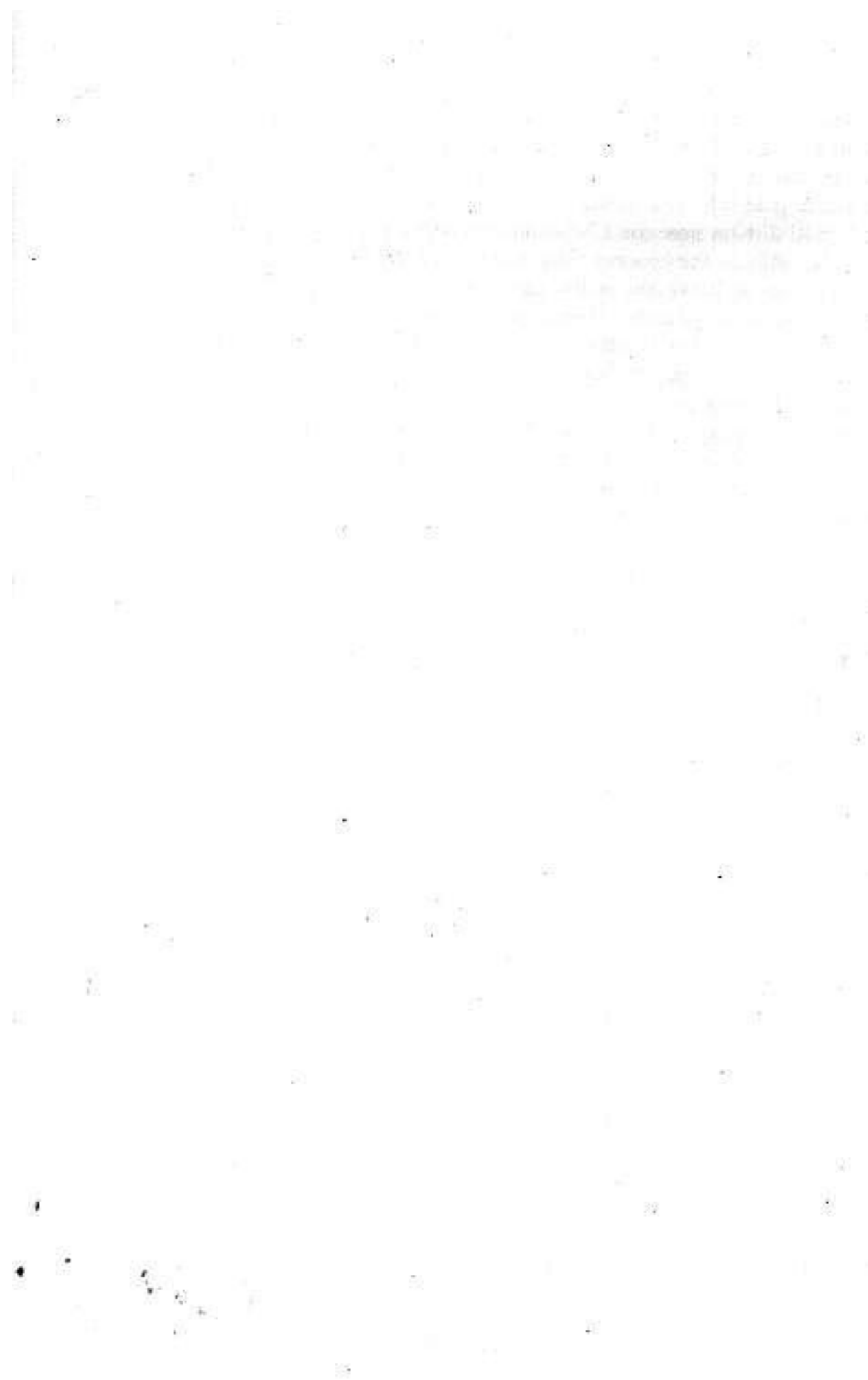

Application and Methods

Sale of 10-dirham Note on 12 Installments of One Dirham is Permissible

[Question 12: If the sale stated in the last question is permissible, would it also be permissible where Zayd wants to borrow 10 dirhams from Amar, and Amar says, "I do not have dirhams but I may sell you 10-dirham note for 12 dirhams on one-year installment-basis credit with the agreement that you would repay one dirham every month?" Or this transaction would be impermissible because it is a legal device to receive *riba* (interest)? If the said transaction is permissible, how is it different from riba, and why is it held lawful (*halal*) and riba is forbidden (*haram*) although both result in excess?]

The transaction stated in the question is permissible provided intention of the parties is to sell and not to raise a loan. Reasons for permissibility are that sale of note is permissible [chapter 2], the credit of a fixed term is permissible [chapter 3], and the excess is also permissible [chapter 4] as I have already presented the research. Installment-based repayment is also a form of fixed-term credit.

On the contrary, where 10-dirham note is lent with the condition that the borrower will repay 12 or 11 dirhams or 10 dirhams plus an octant or half-octant dirham coin, whether on spot or after a period with or without installments, the arrangement will be certainly forbidden and riba. Reason is that it will be a loan that brings a gain whereas our master the Prophet has declared, "A loan that brings a gain is riba."[1] This hadith has been transmitted by Haris Ibn Usama from Caliph Ali, Allah be pleased with them

Separate extra payment upon repayment

Where a loan is given without any condition of excess with repayment and there is no precedent of excess found in their previous transactions, because a precedent is like a condition, then if the borrower repays the loan and also gives something extra that is distinct and separate as favor, so that it is not gift of a part of an undivided asset (*hiba masha*) in a divisible article, the excess will be permissible and not wrong. It will be within the ambit of the following verse from the Quran, "The compensation of favor is a counter favor."[2] The Prophet once bought a trouser [garment]. Price was fixed at that place according to the weight of the cloth. The Prophet advised the seller to assign an increased weight to the trouser.[3]

Purchase of debt by borrower from lender

Consider a situation where a 10-dirham note is lent and at the time of repayment, the borrower does not have a similar note or does not want to give note. Instead he wishes to repay in the form of dirhams, and the repayment is agreed and executed at 12 dirhams for the 10-dirham note. The arrangement will be permissible if dirhams are given in the same meeting so that the parties do not separate with liabilities on both sides.

If the borrower does not have the same note in his possession, the transaction will be permissible according to all three imams. If the borrower has the same note but he does not buy that particular note for dirhams rather he buys the liability, the transaction will be permissible according to Abu Hanifa and Imam Muhammad. However, if the same borrowed note is available and is bought whether for 10, 12 or other number of dirhams, the transaction will be void according to them but Abu Yusuf declares that it will be permissible. Reason for their ruling it as void is that where he borrowed the note he became its owner upon receipt and cannot buy a thing already owned by him from anyone else. It is stated in *Wajiz Kurduri*, "Where creditor has grain or fulus receivable from debtor and the debtor buys the liability with dirhams and parties separate without seisen of the dirhams, the sale will be void. This is among the rules that must be remembered."[4] It is stated in *Shami* reference to *Zakhira*:

> Where the grain receivable by the creditor is bought by the debtor for 100 dinars, the transaction will be permissible since the liability was neither related to original-money exchange nor to advance-payment sale. If the grain has been used before the purchase, it will be permissible according to all three imams since usage makes him owner; and he becomes liable to give equivalent grain. If the grain exists, the arrangement will still be permissible according to Abu Hanifa and Imam Muhammad but not according to Abu Yusuf because the debtor is not owner until he has used

the grain according to his ruling, therefore, he is not liable to give similar grain; and where the buyer asks to buy the grain owed by him, he would be buying a non-existing thing, hence impermissible.[5]

It is stated in *Shami* reference to *Zakhira*:

> Where a person borrows a specific measurement of grain and makes seisen, and later he buys the same grain from the creditor, the purchase will not be permissible according to Abu Hanifa and Imam Muhammad because, to them, the debtor becomes owner of the grain upon making the seisen and cannot buy his own asset. However, according to Abu Yusuf, the grain is still owned by the creditor so the debtor will buy a thing owned by someone else, hence valid.[6]

Use of legal devices to avoid riba

As far as devices to avoid riba are concerned, we have already described them in sufficient detail [in chapter 4]. It was quoted from Abu Yusuf that inah is permissible and its user will get reward from Allah since it involves running away from a forbidden [riba].[7] He was also quoted as saying that the companions of the Prophet practiced and praised inah.[8] Qadikhan quoted similar transaction from the Prophet in which the Prophet ordered its usage.[9] No further evidence is needed after support from the Prophet and the companions. It is stated in *Bahr* from *Quniya*:

> Sale transactions practiced by people to avoid riba have no harm. He then quoted a jurist who declared it improper. Al-Baqali has narrated that it is improper according to Imam Muhammad, and that there is no harm in it according to Abu Hanifa and Abu Yusuf. Al-Zaranjri states that Imam Muhammad has opposed it where sale is undertaken after the loan. However, if money is given after entering sale transaction, it is permissible with the consensus [of all three imams].[10]

Likewise, al-Khawahirzada has narrated consensus on its permissibility provided there is no condition of the sale in loan. Now if the Prophet advised it, the companions have practiced and praised it, and our imams have consensus over its permission, there could not be any doubt about its permissibility. And Allah is the guide towards the correct.

I say that the above rules apply in situations where sale and loan gather in the manner that some dirhams are lent besides selling a minute thing for significant price to the debtor. The debtor accepts because of the need to secure credit. In this situation, if loan transaction occurs first, some ulema declare it improper since it will be a loan that brings a gain. However, if sale occurs first, there will be no harm according to the consensus of all imams since it will be a sale that brings gain of loan, as added by al-Halwani and fatwa is according to this as stated in *Shami*.[11] Our subject sale of note is purely a sale and no debt is involved either before or after

the sale so its permissibility with consensus is more suitable and reasonable, and free from any fear and contradiction.

Proofs of the permissibility of devices from the Quran and Hadith

If you need more information about devices, our Allah orders to Prophet Ayub, peace be upon him, "Take a brome in your hand and whip with it, and do not break your oath."[12]

Our Master the Prophet taught device to avoid riba and a method to achieve objective with safety from forbidden as follows, as quoted by al-Bukhari and al Muslim from Abu Sa'id Khudri:

> He say that the companion Bilal brought burni dates to the Prophet; The Prophet asked him, "From where have you taken these?" Bilal submitted, "We had some low-quality dates; we exchanged one sa'a of burni dates for two sa'a of our inferior ones." The Prophet declared, "Wrong! it is certainly riba, it is certainly riba, do not transact as such; when you intend to buy burni dates, sell your dates for something else, and then buy the burni dates for that thing."[13]

Al-Bukhari and al-Muslim states as follows with reference to Abu Sa'id Khudri and Abu Hurayra:

> They say that the Prophet sent a man to Khyber as governor. The man brought janib dates to the Prophet. The Prophet asked him, "Are all the dates in Khyber like these dates?" He submitted, "No, my master and the Prophet of Allah, I swear to Allah; we take one sa'a of janib dates for two sa'a of other dates and two of it for three of others." The Prophet declared, "Do not transact as such, rather you should sell your dates for dirhams and buy janib dates for the dirhams.[14]

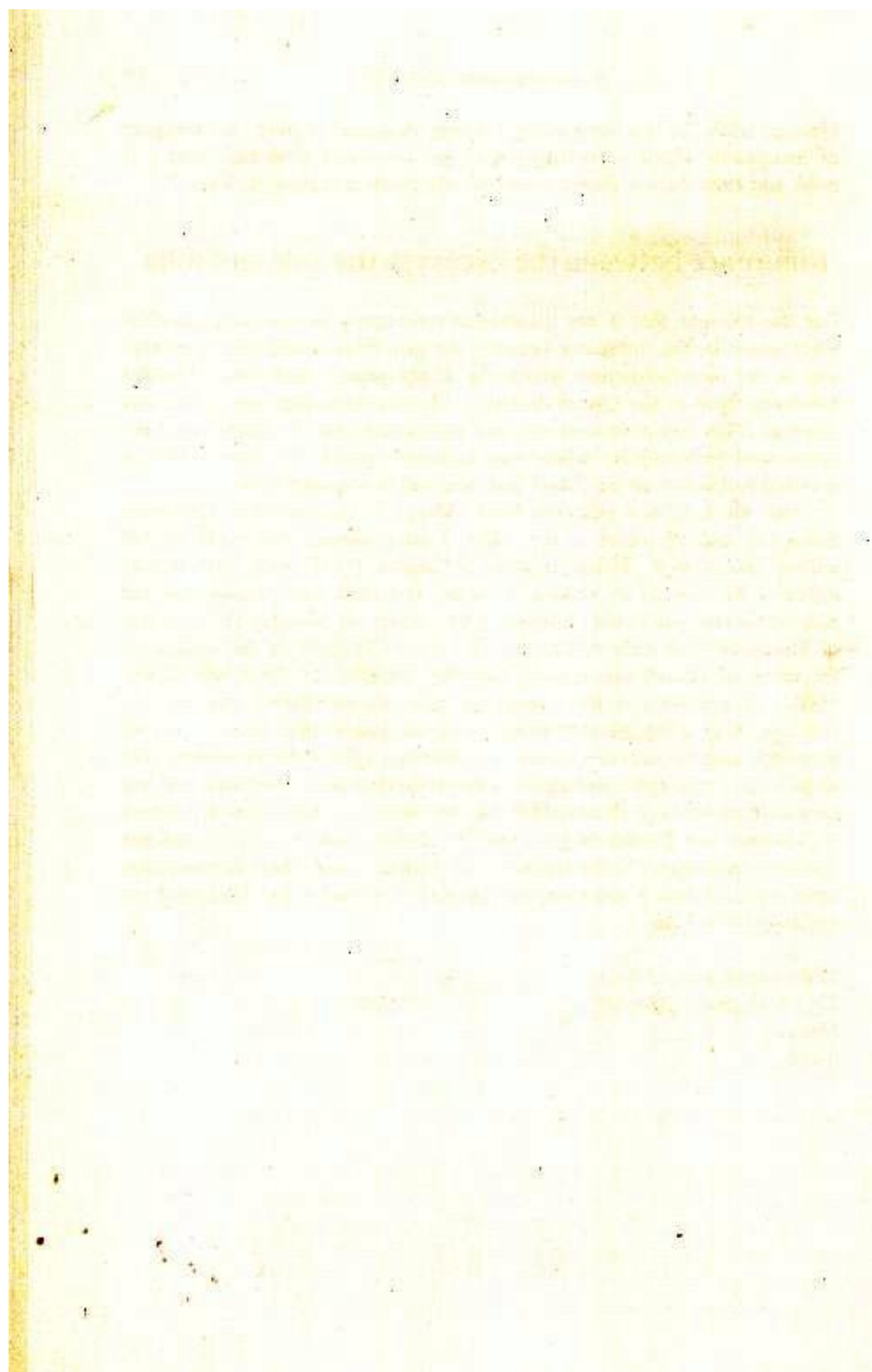
I say that those who declared it improper, like Imam Muhammad, declared so to prevent people from carrying impermissible transactions after becoming habitual of it, as stated earlier from *Fath* and *Muhit*, whereas in our times a reverse situation has arisen. Riba-based transactions are common among people, and they do not feel any hesitation as if these transactions have no harm. So one who saves them from this great misfortune and a major sin [riba], and brings them towards any of the permissible devices, like sale of 10-driham note for 12 dirhams on installment basis and other devices, as cited from *Khaniya* of Qadikhan, he will be certainly a well-wisher of the Muslims. And Islam means welfare concerning every Muslim. Although people are openly involved in sinful activities, Islam remains their religion. When they know the methods to achieve their objective with safety from forbidden, they would certainly seek forgiveness [from Allah] because they have no enmity with Islam and Sharia. Jurists like Muhammad Ibn Salmah and others told traders that inah quoted in the hadith was better than their sale transactions. Ibn

Humam adds, "It is a valid ruling because void sale is under the category of usurpation which is forbidden and has no match with inah which is valid, and even there is disagreement whether inah is improper or not."[15]

Difference between the Excess in the Sale and Riba

For the thought that if the questioned transaction is not impermissible, what would be the difference between the gain from it and riba. I say that this is the same objection which the kafirs raised. And Allah Himself answered them in the Quran declaring, "Kafirs claim that sale is like riba whereas Allah has permitted sale and prohibited riba."[16] Clearly, we have announced permissibility where two different species are traded. If it is declared forbidden, all purchases and sales will be impermissible.

With the help and guidance from Allah, all the questions have been answered; and all praise is for Allah. I have named this book as *Kifl al-Faqih al-Fahim fi Ahkam al-Qirtas al-Darahim (1324)* such that it also indicates the year of its writing. I started this book on Saturday but fall sick on Sunday and could complete it by midday on Monday the 23rd day of Muharram year 1324 AH in the holy city of Makkah on the wishes of, the imam of Hanafi prayer place (*musalla*), Sheikh Abd Allah, son of the Sheikh of orators and the master of great ulema, Sheikh Ahmad Abi al-Khair. May Allah protect them from all losses, give share from all blessings, forgive our sins, make our burdens lighter, fulfill wishes, and allow us to come again and again to this respected place [Makkah] and the shrine of his beloved [Medina] till the time when we would die in Medina as Muslims and buried in graveyard at Medina (*Jannat al-Baqi*), and get intercession (*shafa'at*) of the highness, the Prophet, may Allah devote peace upon him, his family and companions. And all praise is for Allah, and we are thankful to Him.

Muhammad Ahmad Raza
23rd Muharram 1324 AH
Makkah
(Seal)

Appendices

A: Earlier Fatwa of Raza

Question
What do ulema say about discounting of note, for example, purchase of a 100-dirham note for 99 dirhams is permissible or not? Please reply, may you be rewarded [by Allah] for it.
[1299 AH.] Shahjahanpur, India

Answer
Clearly, note is a new thing that has been invented in recent past. It was not found in the times of earlier jurists so that its ruling could be found in their works. However, as far as I consider, the questioned transaction appears to be permissible according to the fiqh, and there seems to be no reason for its impermissibility; apparently because the causes of the prohibition of riba are the measurement criteria [weight or volume] with the same species. Where measurement criteria and species both are same, excess and credit both will be forbidden. Where one of the causes is present, excess will be permissible but credit will be forbidden. And where neither of the two causes is present, both excess and credit will be lawful (*halal*), as stated in the books of the fiqh. It is stated in *Tanwir*:

> The causes for prohibition of the excess are sameness of measurement criteria and that of species. If both causes are present, excess and credit both will be forbidden. If one cause is present, excess will be lawful but credit will be forbidden. And if both causes are absent, excess and credit both will be lawful.[1]

In the subject transaction, both [the causes] are absent. Absence of same specie because note is paper whereas dirham is silver, and absence of the measurement criteria because note is neither dealt with by volume nor

by weight. So based on the defined principle, both excess and credit should be lawful.

The issue has been answered in the above lines but a person who is not a jurist may have doubt that although note is only a printed paper, it is treated in custom (*urf*) and practice (*istilah*) as if it is same as dirham. For this reason, note is used in place of dirhams and payments in the form of 100-dirham note and 100 dirhams are not differentiated. Generally, it is used like original moneys [gold and silver coins] so one may think as if it was 100 dirhams sold for 99 dirhams, which must be forbidden. So the questioned transaction should be ruled as forbidden.

I say that one who has some foresight in Fiqh can address this doubt easily. The usage of note as money cannot make it original money. At the most, note would be istilahi money like things that are originally among articles [not moneys] but custom and practice have made them moneys, for example, fulus and, in some cities, cowry shells (*kodis*). Since original moneys comprise only gold and silver, where users proceed to use non-monetary things as moneys, they will have to value them in terms of original money. For this reason, value of fulus is stated in terms of dirhams, for example, one dirham equals 16 *anas* [one ana equals four fulus]. Similarly, when they proceeded to declare note as istilahi money, they fixed its value in relation to original money. They fixed the value of a particular type of note as equal to 100 dirhams, another as equal to 200 dirhams, a third as equal to 1000 dirhams. But all these ratios are fixed by practice and do not make the measurement criteria and species of note same to dirhams. As 16 anas do not become one dirham when fixed in relation to dirham, agreeing for the ratio of a 100-dirham note to 100 dirhams would not make that note silver [dirham]. Hence, the cause for prohibition of riba is not present.

Parties to a contract are not bound to follow custom and practice that has fixed relative prices [ratio of the face value of note to dirham]. They have exclusive authority over their transaction and may sell a 100-dirham article for a fals or for 1000 dinars with mutual consent. Do not you see that number of fulus equal to a dirham is always fixed in custom but ulema have ruled permissibility of selling a half dirham coin for more than equivalent fulus [eight *anas*]. Similarly, everyone knows that one dinar has price equal to several dirhams but jurists have declared purchase of one dinar for one dirham permissible. Again, reason is the difference in species which makes the excess permissible. It is stated in *Dur*:

> Where a person gives one large dirham to money changer and demands fulus of half dirham and a small dirham [equal in weight to half the large dirham wanting a habba], the transaction will be permissible. Silver in the large dirham weighing equal to the small dirham will be the counter value of it and the remaining silver of the large dirham will be the counter value of the fulus.[2]

It is also in *Dur*, "Sale of two dirhams and one dinar for one dirham and two dinars is valid, and species would be the counter value of each other."[3] And where Sharia has permitted these transactions are permissible by Sharia, there could be no harm in buying 100-dirham note for 99 dirhams because neither the measurement criteria nor specie of the counter values is same. This is the ruling for sale in which profit and benefit are permissible.

However, where 99 dirhams are lent with the condition that 100-dirham note will be repaid, the arrangement will be definitely prohibited because "a debt that brings a gain is riba,"[4] as evidenced from the Hadith and Fiqh. To the extent that jurists have declared money transfer loan (*suftaja*) impermissible because it brings the gain of security during money transfer. And advancing money with the condition that the depositor would gradually buy the merchandise has been declared improper, as stated in *Hidaya* and other books although these gains are not assets then how this gain could be permissible in values. Certainly, this would be opposed to the objective of Sharia to protect the assets of people which is the reason for legislating riba as forbidden, as stated in *Fath*.

This is what has appeared to me, and Allah has all the knowledge.

Muhammad Ahmad Raza

Question
What do ulema say about the transaction in which 100-dirham note is sold for 120 dirhams such that buyer will pay 10 dirhams each month?
8 Ramadan 1314 AH

Answer
Note is one of saleable things. Owner of an asset has right to receive profit from sale of the asset with consent of buyer. A cloth worth 10 dirhams may be sold with the consent of the buyer for 100 dirhams, and dirhams may be paid on spot or through installment-based credit. Ibn Humam states in *Fath*, "Sale of a piece of paper for 1000 [dirhams] is permissible and not improper."[5] However, where 100 dirhams are lent with the condition that 110-dirham note will be received in repayment; or where 100-dirham note is sold for 110 dirhams with the condition that if the payment is made over a year, 10 dirhams shall be paid each month; these transactions are riba and forbidden. The holy Prophet, peace and blessings upon him, declared that "a loan that brings a gain is riba."[6]

A doubt as to why sale for more is permissible, whereas a loan with excess on repayment is forbidden, constitutes the same objection that non-Muslims raised against Sharia. Allah replied them declaring, "Non-Muslims claim that sale is like riba, whereas Allah has permitted sale and prohibited riba."[7]

B: Fatwa of Other Senior Ulema

Question

What do ulema say in the matter of note, whether its sale for more or less [than the face value] is permissible or not? Please reply. May you be rewarded [by Allah] for it.

Answer

Purchase and sale of note for more or less [than the face value] is permissible because the state has declared it an asset. A thing that is declared asset in practice of public, whether its status as money and asset is proved or not, its status as money and asset is proved by mere agreement of public. Sale of it for more or less [than the face value] is permissible. It is stated in *Hidaya*:

> Sale of a fals for two determinate fulus is permissible according to Abu Hanifa and Abu Yusuf. According to Imam Muhammad, it is impermissible because the status as money was established by practice of all people and, therefore, it would not void by practice of the two parties [of a contract]. Accordingly, where the status as money remains intact, fulus cannot be determined, and would be like an indeterminate thing, and thus the transaction will become sale of a dirham for two dirhams. Abu Hanifa and Abu Yusuf rule that the status of fulus as money is established by terms of buyer and seller because others do not have any authority over them. So the status of fulus as money will be void by their agreement to void it, and where the status as money is void, fulus could be determined accordingly.[8]

Hence, where note as a paper has proved to be an asset, its purchase and sale for less or more [than the face value] is permissible. It is stated in chapter on inah of *Shami*, "Sale of a piece of paper for 1000 [dirhams] is permissible and not improper."[9] And Allah has all the knowledge.

Muhammad Riyasat Ali Khan
(Seal)

The answer is correct.
Muhammad Irshad Husayn (Rampuri)

The said sale and purchase is permissible.
Muhammad Abd al-Qadir

The answer is correct.
Muhammad Hasan

No doubt, it [note] is istilahi money, and the sale and purchase is permissible.
Abu al-Qasim Muhammad Muzammil

The answer is valid.
Hamid Husayn

This is the answer.
Muhammad Nazar
(Seal)

The answer is valid.
Muhammad Ejaz Husayn

The answer is correct.
Muhammad Abd al-Jalil Ibn Muhammad Abd al-Haq Khan

The ruling about validity of the sale is correct.
Muhammad Inayatullah

بشکریہ جناب خلیل احمد رانا صاحب
پیشکش:۔ محمد احمد ترازی

C: Fatwa of Abd al-Hay Lucknawi

Question
What do ulema say in the matter that sale of 100-dirham note for less or more [than the face value] is permissible or not?

Answer
With the help of the confirmer of correct. Although note is not original money but injunctions [of Sharia] apply to note because it is money in custom (*urf*). In fact, it is considered as actual (*ain*) money. It is because where someone destroys 100-dirham note, the real owner will receive 100 dirhams as compensation. Where 100-dirham note is sold, the objective will not be to receive the price of that paper [note], simply because that paper even does not worth two fulus, rather the objective will be to sell 100 dirhams and receive the price.

Where a person borrows 100-dirham note, whether he gives 100-dirham note or 100 dirhams at the time of repayment, both would be considered equal and the creditor would not object to the repayment from the debtor in either form although the creditor would not accept if the debtor gives another specie as the repayment. On the contrary, although fulus are also money by custom, this condition is not found in fulus. Where a person buys a thing for one dirham or borrows one dirham and gives or repays in the form of equivalent fulus, the seller or creditor would have the option to accept or reject, and the government cannot force him to accept [the fulus] without any reason. Hence, fulus are not original moneys by custom as opposed to note which is same as original money although this sameness is not original rather by custom.

Hence, the permissibility of excess in sale of fulus does not mean that the excess in sale of note is also permissible because specie of fulus is not same, by origin or custom, as original moneys although it has status as money because of the practice and custom. Hence, note is considered same in all aspects as original money for all the injunctions [of Sharia] as a custom. This is the reason for ruling about the excess, and excess in its dealing would be forbidden. Acts depend upon intentions, and one gets reward according to his intention.[10]

Even if it does not have riba, doubt of its existence is present; and all books of fiqh state that doubt of riba is also forbidden. Apart from this, whosoever adopts excess in sale of note, his objective would be nothing except to obtain more dirhams for fewer dirhams, and nothing but a legal device (*hila*) in transacting with note. Clearly adopting such a device cannot result in declaring it allowed. It is stated in *Tahzib al-Iman*:

> No doubt, any objective from contract as per Sharia other than objective for which Allah has legislated that is forbidden because such a person deceives religion and Sharia; because the objective from such a legal device is to obtain a thing prohibited by Allah or to abort a thing made imperative by Allah.[11]

Therefore, even if excess in note is permissible according to law, it will not be valid according to sincerity with each other and Allah. For this reason *inah* (sale-and-buyback sale) and purchase of something for a price less than for which it was sold have been prohibited in books of Fiqh. And numerous supporting hadiths exist that prove prohibitions of such devices. If a doubt arise that note is not original money in every respect than how it could attract same ruling as original money in all cases, its reply is that because it is considered as original money in practice and serves all purposes of original money so there is no other way for its ruling in case of excess especially from point of honesty which belongs to objectives even when such objectives are hidden.

For the statement of *Fath*, "Sale of a piece of paper for 1000 is permissible (period)"[12] is concerned, it does not mean the paper money which is considered original money because it did not exist at that time, rather it means blank paper.

This is what has appeared to me, and Allah knows all the truth and has the holy book.

Muhammad Abd al-Hay Lucknawi

Glossary

adah	habit
ahad al-badlayn	seisen by one party
Akhira	the Hereafter
alim	one of ulema
amwal al-riba	assets in which riba is possible
aqd	contract
aqidin	contracting parties
aqil	person of sound mind
aqol	I say
bay muq'ayda	barter sale; sale of goods for goods
bay mutlaq	simple sale; sale of goods for money
bai	sale
baligh	adult
batil	void
cadi	Muslim judge
dayn	liability
fard	mandatory
fasid	invalid
fatwa	legal opinion
Fiqh	Jurisprudence
fiqh	school of law
fuqaha	jurists
gunah	sin
gunah-i kabira	major sin
gunah-i saghira	minor sin
hadith	individual saying of the Prophet Muhammad
Hadith	sayings of Prophet Muhammad being a source of law
hadith-i madal	a classification of hadiths
hadith-i maqtu	a classification of hadiths
hadith-i munkar	contradictory hadith

hadith-i munqata	a classification of hadiths
hadith-i mursal	a classification of hadiths
hadith-i shaz	rare hadith
halal	lawful
haram	forbidden
hashiya	gloss, annotation
hawala	assignment of debt
hiba masha	gift of a part of an undivided asset
hiba	gift
hila	legal device
Ijma	juristic consensus
illah	effective cause
ilm	knowledge, science
imam	leader, ritual prayer leader
inah	sale wherein seller buys back the thing at a lesser price
istalah	practice
istalahi money	thing in use as money because of practice
Istehsan	juristic preference
jayz	permissible
jihad	a war or struggle against unbelievers
jins	specie
juzyat	cases
kaffara	punitive alms
kafir	non-Muslim
karamat	miraculous act
khalifa	sufi deputy
khilaf-i ula	against the best practice
kulyat	general rules
mahr	dower
majlis	meeting (physical)
makruh	improper
makruh-i tahrimi	prohibitive improper
makruh-i tanzihi	non-prohibitive improper
mal al mutqum	valuable asset
mal	asset
manqulat	transmitted sciences
maqulat	rational sciences
masafahat	the four books
mashaikh	jurists
masjid	mosque
matun	legal texts (in contrast to commentaries and glosses)
mithli	fungible
mozun	things sold by weight
mubah	allowed

mufti	jurisconsult
muhaddithin	experts of Hadith sciences
mujtahid	a person accepted as an original authority in Islamic law
muqayada	sale of goods for goods, like barter
musalla	place from where prayer is lead
mustahab	recommended act
mutayan	determinate; ascertained
nau	kind
nikah	marriage
nisab	prescribed limit
note	currency note
nur	divine light
qabda	seisen; act of taking possession
qabdayn	mutual seisen; seisen by both parties
qada i hajat	prayer for fulfilment of a wish
qadr	measurement by volume or weight
qard	loan
qibla	the direction towards Kaaba
Qiyas	juristic analogy
rasm al-mufti	juristic ethics
riba	interest; usury
riwaj	circulation
riwayat	citations
sadqa-i fitr	mandatory alms payable at the end of Ramadan
salaam	Islamic way of greeting
salam	advance-payment sale
salat	the ritual prayer performed five times daily by Muslims
salf	early Muslims
sarf	original-money exchange
sharh	commentary
Sharia	Islamic Law
silsila	Sufi chain
suftaja	money-transfer loan
suk (pl. *sukuk*)	bond
sunna	individual tradition of the Prophet
Sunna	Traditions of the Prophet as legal source
sunnan	a collection of hadith arranged according to subjects
sura	a chapter or section of Quran
takbir	announcing greatness of Allah
thaman	money, price
thiqa	trust-worthy or reliable person
ulema	Muslim scholars recognized as experts in Islamic law
umma	Muslim nation
urf	custom

urus	commodities
usul	principles
verse	clause or sentence from Quran
wajib	imperative
wasf	attribute; characteristic
wasi	executor
wilayah	authority
zakat	annual mandatory alms if value of certain assets exceeds

Units of weights, measures and currencies

adli	a base coin
ana	half-octant dirham coin
athanni	half dirham coin
chawal	a unit of weight
chawanni	quarter dirham coin
chidam	quarter fals
dhela	half fals
dinar	gold dinar coin
dirham	silver dirham coin
doubles	state issued copper coins in India
fals (pl. *fulus*)	copper or nickel coin
habba	a unit of weight
halala	Arabian copper coins
ikanni	half-octant dirham coin
jafta	a cubic measure
kodi	cowry shell as currency
mansuri	rectangular copier pieces used as currency in India
mithqal	a unit of weight
nisf	an Egyptian coin equal to 40 qatas
paisa	Indian *fals*
piyala	a cubic measure
qadh	a cubic measure small than *sa'a*
qata	an Egyptian currency
qursh	an Egyptian currency
ratal	a cubic measure
ratti	a unit of weight
riyal	a currency used in Hejaz
sa'a	a cubic measure

Notes and References

TRANSLATOR'S INTRODUCTION

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[3] Raza, Muhammad Ahmad, *Al-Malfuz (1338)*, ed. Mustafa Raza Khan, Lahore: Shabbir Brothers

FOREWORD

[1] The Quran, surah 57 (al-Hadid), verse 21

1. LEGAL POSITION OF NOTE

[1] Ibn Abidin al-Shami, Muhammad Amin, *Rad al-Muhtar ala al-Dur al-Mukhtar* (also known as *Fatawa-i Shami* or *Hashiya Ibn Abidin*), Book: sales, vol. 4, Beruit: Dar al-Ahya al-Turath al-Arabi, p. 3; Ibn Nujaym, Zain al-Abidin ibn Ibrahim, *Bahr al-Ra'iq sharh Kanz al-Daqa'iq*, Karachi: H. M. Saeed Company

[2] Ibn Abidin, *Rad al-Muhtar*, Book: sales, vol. 4, p. 3; *Al-Tawzih al-Talwih*

[3] Ibn Abidin, *Rad al-Muhtar*, Book: sales, vol. 4, p. 3

[4] Al-Qabsi, Jamal al-Din Ahmad ibn Muhammad, *al-Hawi al-Qudsi*; Ibn Nujaym, *Bahr al-Ra'iq*

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[6] Al-Bukhari, Muhammad Ibn Isma'il, *al-Jami al-Sahih al-Bukhari*, vol. 1, Karachi: Qadimi Kutubkhana, p. 2

[7] Ibn Humam, *Fath al-Qadir*, vol. 6, p. 324

[8] Al-Marghinani, Burhan al-Din Ali Ibn Abu Bakr Farghani, *Al-Hidaya Sharh Bidayat al-Mubtadi*, Book: theft, vol. 2, Karachi: Al-Maktabat al-Arabiya, p. 518; Lucknow: Matba-i Yusufi

[9] The Quran, vol. 4, sura: al-Nisa, verse 29

[10] Al-Marghinani, *Hidaya*, vol. 2, pp. 520–1

[11] Al-Marghinani, *Hidaya*, vol. 2, pp. 360, 364

[12] Ibn Nujaym, *Bahr al-Ra'iq*, Book: original-money exchange, vol. 6, Quetta, p. 321

[13] Ibn Abidin, *Rad al-Muhtar*, Book: sales, ch. Original-money exchange, vol. 7, p. 574

[14] Al-Haskafi, A'la al-Din, *Al-Dur al-Mukhtar Sharh Tanwir al-Absar*, ch. Original-money exchange, vol. 2, Delhi: Matba-i Mujtabai, p. 57
[15] Qari al-Hidaya, Siraj al-Din Umar bin Ishaque, *Fatawa-i Qari al-Hidaya*, Issue: Zakat on Currency, Oman: Dar al-Furqan, p. 29

2. SALE OF NOTE

[1] Ibn Abidin, *Rad al-Muhtar ala al-Dur al-Mukhtar* (also known as *Fatawa i Shami* or *Hashiya Ibn Abidin*), vol. 4, Beruit: Dar al-Ahya al-Turath al-Arabi, p. 5
[2] The Quran, vol. 16, sura Al-Nahl, verse 78
[3] Al-Khwarzmi, Jalal al-Din ibn Shams al-Din (d. 800/1397), *Al-Kafaya*, On the margin of *Fath al-Qadir ala al-Hidaya*, vol. 6, Sukkur: Maktaba-i Nuriya Razwiya, p. 43; and similar is mentioned in *Fath al-Qadir*
[4] Ibn Abidin, *Rad al-Muhtar*, vol. 4, p. 3; Ibn Nujaym, Zain al-Abidin ibn Ibrahim, *Bahr al-Ra'iq sharh Kanz al-Daqa'iq*, Karachi: H. M. Saeed Company; *Kashf al-Kabir*
[5] Al-Timurtashi, Shams al-Din Muhammad Ibn Abd Allah (d. 1004/1595), *Minh al-Ghaffar sharh Dur-i Mukhtar*
[6] Al-Timurtashi, *Minh al-Ghaffar*,
[7] Ibn Abidin, *Rad al-Muhtar*, vol. 1, p. 515
[8] Ibn Humam, Kamal al-Din Muhammad, *Fath al-Qadir lil Ajiz al-Faqir ala al-Hidaya*, vol. 6, Sukkur: Maktaba-i Nuriya Razwiya, p. 324
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[10] The Quran, sura 2, verse 275
[11] The Quran, sura 4, verse 29
[12] Ibn Humam, *Fath*, vol. 5, p. 455
[13] Al-Khwarzmi, *Kafaya*, ch. Void sale, vol. 6, p. 43
[14] Ibn Humam, *Fath*
[15] Ibn Abidin, *Rad al-Muhtar*, vol. 4, p. 80; and as mentioned in *Asrar* and copied from it in *Fath al-Qadir* by Ibn Humam
[16] Ibn Humam, *Fath*, vol. 6, pp. 152–3

3. LENDING AND CREDIT SALE OF NOTE

[1] Al-Haskafi, Ala al-Din ibn Ahmad, *al-Dur al-Mukhtar fi sharh Tanwir al-Absar*, ch. Original-money exchange, vol. 2, Delhi: Maktaba-i Mujtabai, p. 55
[2] Ibn Abidin, *Rad al-Muhtar ala al-Dur al-Mukhtar* (also known as *Fatawa-i Shami* or *Hashiya Ibn Abidin*), ch. Riba, Beruit: Dar al-Ahya al-Turath al-Arabi; Ibn Nujaym, *Bahr al-Ra'iq*
[3] Ibn Abidin, *Rad al-Muhtar*, Ibn Nujaym, *Bahr al-Ra'iq*
[4] Nizam al-Din et al, *Fatawa-i Alamgiriya* (also known as *Fatawa-i Hindiya* or *Fatawa-i Alamgiri*), Book: Original-money exchange, vol. 3, Peshawar: Nurani Kutabkhana, p. 224
[5] Nizam al-Din et al, *Fatawa-i Alamgiriya*, Book: Original-money exchange, vol. 3, p. 225
[6] Nizam al-Din et al, *Fatawa-i Alamgiriya*
[7] Nizam al-Din et al, *Fatawa-i Alamgiriya*, Book: Sales, vol. 3, p. 102
[8] Nizam al-Din et al, *Fatawa-i Alamgiriya*, Book: Original-money exchange, vol. 3, p. 225
[9] Nizam al-Din et al, *Fatawa-i Alamgiriya*, Book: Sales, vol. 3, pp. 225–6
[10] Al-Haskafi, *Dur*, Book: Sales, vol. 2, p. 42

[11] Ibn Abidin, *Rad al-Muhtar* quoting *Fatawa i Qari al Hidaya*, vol. 4, p. 184

[12] Al-Kurduri, Hafiz al-Din Muhammad ibn Muhammad Bazzazi, *Al Jama al Wajiz* (also known as *al Fatawa al Bazaziya*), On the margin of *Fatawa i Alamgiriya*, Peshawar: Nurani Kutabkhana

[13] Ibn Nujaym, Zain al-Abidin ibn Ibrahim, *Bahr al-Ra'iq sharh Kanz al-Daqa'iq*, Karachi: H. M. Saeed Company

[14] Ibn Abidin, *Rad al-Muhtar*, ch. Riba, vol. 4, p. 184

[15] Ibn Abidin, *Rad al-Muhtar*, ch. Riba, vol. 4, p. 184

[16] Ibn Abidin, *Rad al-Muhtar*, Book: Sales, ch. Riba, vol. 4, p. 184

[17] Ibn Abidin, *Rad al-Muhtar*, Book: Sales, ch. Riba, vol. 4, p. 184

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[20] Al-Marghinani, *Hidaya*, Book: Sales, vol. 3, p. 82

[21] Al-Haskafi, *Dur*, vol. 2, p. 41

[22] Al-Haskafi, *Dur*, ch. Riba, vol. 2, p. 41

[23] Al-Marghinani, *Hidaya*, Book: Sales, ch. Riba, vol. 3, p. 83; Al-Ayni, Badr al-Din Abu Muhammad, *al-Banaya sharh al-Hidaya*, ch. Riba, vol. 3, Makkah: Al-Maktab al-Imdadiya, p. 154

[24] Ibn Humam, Kamal al-Din Muhammad, *Fath al-Qadir lil Ajiz al-Faqir ala al-Hidaya*, vol. 6, Sukkur: Maktaba-i Nuriya Razwiya, p. 208

[25] Ibn Nujaym, *Bahr*, Book: Sales, ch. Riba, vol. 6, p. 129

[26] Ibn Nujaym, *Bahr*, Book: Sales, ch. Riba, vol. 6, p. 130

[27] Ibn Humam, *Fath*, Book: Sales, ch. Riba, vol. 6, p. 162

[28] Al-Marghinani, *Hidaya*, Book: Sales, ch.Riba, vol. 3, p. 83

[29] Al-Haskafi, *Dur*, vol. 2, p. 47

[30] Ibn Abidin, *Rad al-Muhtar*, Book: Sales, ch. Advance-payment sale, vol. 4, p. 203

[31] Al-Marghinani, *Hidaya*, Book. Sales, ch. Advance-payment sale, vol. 3, p. 94

[32] Ibn Humam, *Fath*, Book: Sales, ch. Advance-payment sale, vol. 6, pp. 208–9

[33] Al-Marghinani, *Hidaya*, Book: Sales, ch. Riba, vol. 3, p. 83

4. FACE VALUE AND PRICE OF A NOTE

[1] Ibn Abidin, *Rad al-Muhtar ala al-Dur al-Mukhtar* (also known as *Fatawa-i Shami* or *Hashiya Ibn Abidin*), vol. 4, Beruit: Dar al-Ahya al-Turath al-Arabi, pp. 179–80

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